# Supreme Court of the United States

OCTOBER TERM, 1970

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No. 910

ALLIED CHEMICAL & ALKALI WORKERS OF AMERICA, LOCAL UNION NO. 1, PETITIONER

*v.*

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION AND NATIONAL LABOR RELATIONS BOARD, RESPONDENTS

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No. 961

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION AND ALLIED CHEMICAL & ALKALI WORKERS OF AMERICA, LOCAL UNION NO. 1, RESPONDENTS

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*ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

INDEX





419-857 O—71

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

IN THE MATTER OF: ALLIED CHEMICAL & ALKALI WORKERS OF AMERICA, LOCAL UNION NO. 1 AND PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION

8–CA–4202

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|---|---|
| 4/12/66 | Charge Filed |
| 11/22/66 | Amended Charge Filed |
| 11/22/66 | Regional Director's Complaint and Notice of Hearing Issued |
| 11/30/66 | Company's Answer to Complaint |
| 1/17/67 | Hearing Opened |
| 1/17/67 | Hearing Closed |
| 4/14/67 | Trial Examiner's Decision Issued |
| 5/29/67 | Union's Exceptions Filed |
| 5/31/67 | Company's Exceptions Filed |
| 6/ 1/67 | General Counsel's Exceptions Filed |
| 7/ 9/69 | Decision and Order Issued by the National Labor Relations Board |
| 9/23/69 | Company's Petition for Review Filed |
| 10/ 8/69 | Court's Order Entered Granting Union Motion to Intervene |
| 10/31/67 | Board's Cross-Application for Enforcement and Certified List Filed |
| 4/ 6/70 | Oral Argument Held |
| 6/10/70 | Court's Opinion Issued |
| 7/ 6/70 | Board's Petition for Rehearing and Suggestion for Rehearing en banc Mailed |
| 7/31/70 | Court's Order Entered Denying Board's Petition for Rehearing |
| 8/11/70 | Mandate Issued |
| 10/16/70 | Order of Mr. Justice Stewart Extending Board's Time for Filing Petition for Certiorari |
| 10/30/70 | Union's Petition for Certiorari Filed |
| 11/12/70 | Board's Petition for Certiorari Filed |
| 2/22/71 | Supreme Court's Order Granting Union's and Board's Petitions for Certiorari |

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

Case No. 8-CA-4202

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION and LOCAL UNION NO. 1, ALLIED CHEMICAL AND ALKALI WORKERS OF AMERICA

**Complaint and Notice of Hearing**

It having been charged by Local Union No. 1, Allied Chemical and Alkali Workers of America, herein called the Union, that Pittsburgh Plate Glass Company, Chemical Division, herein called the Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Eighth Region, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. (A) The original charge herein was filed by the Union against the Respondent on April 12, 1966, and a copy thereof was served upon Respondent by registered mail on April 13, 1966.

(B) An amended charge was filed by the Union against Respondent on November 22, 1966, service by registered mail being made upon Respondent simultaneously with the service of this Complaint.

2. Respondent is now, and has been at all times material herein, a corporation duly organized and existing by virtue of the laws of the State of Pennsylvania, with its main office located in Pittsburgh, Pennsylvania. Respondent is en-

gaged in the manufacture and sale of glass and glass products at various plants in the United States. At its Barberton, Ohio, plant, which is the only facility involved herein, Respondent produces various chemicals used in the manufacture of glass. Annually, Respondent ships goods valued in excess of $50,000 from its Barberton, Ohio, plant to points located outside the State of Ohio.

3. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. The following employees at Respondent's Barberton, Ohio, plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All hourly rated employees employed at the Respondent's Barberton, Ohio, plant, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

6. (A) Commencing on or about January 1, 1949, and including all times material herein, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above in Paragraph 5, and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(B) Commencing on or about January 1, 1949, and continuing to date, the Respondent and the Union have engaged in collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of

employment, concerning the employees in the unit described above in Paragraph 5, including retired employees, and on or about October 20, 1964, entered into a collective bargaining agreement covering said unit, which expires October 19, 1967, and said collective bargaining agreement remains in full force and effect.

7. On or about March 21, 1966, Respondent announced a proposed plan affecting the rights of retired employees to participate in the hospital and medical insurance plans provided for by collective bargaining agreements between Respondent and the Union

8. Commencing on or about March 21, 1966, and continuing thereafter, the Union has requested, and is requesting, Respondent to bargain collectively with respect to hospital and medical insurance, and other terms and conditions of employment of the retired employees and the employees of Respondent in the unit described above in Paragraph 5.

9. On or about March 24, 1966, the Respondent, without giving the Union an opportunity to bargain, unilaterally instituted a plan which altered the rights of retired employees to participate in hospital and medical insurance provided for by collective bargaining agreements between Respondent and the Union.

10. Commencing on or about March 24, 1966, and continuing thereafter, Respondent did refuse, and continues to refuse to bargain collectively with the Union as the collective bargaining representative of all the employees in the unit described above in Paragraph 5, including retired employees, in that Respondent has refused, and continues to refuse to return retired employees' hospital and medical insurance plans to the status existing prior to its unilateral action described above in Paragraph 9.

11. By the unilateral acts described above in Paragraph 9, Respondent altered the rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees in the unit described above in Paragraph 5.

12. Commencing on or about March 24, 1966, and continuing thereafter, Respondent, without giving prior notice to the Union, bargained directly and individually with retired employees and with employees in the unit described above in Paragraph 5, concerning rates of pay, wages, hours of employment, hospital and medical insurance, other terms and conditions of employment, and their desire to alter their existing rates of pay, wages, hours of employment, hospital and medical insurance, and other terms and conditions of employment.

13. By the acts described above in Paragraphs 9, 10, 11 and 12, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

14. By the acts described above in Paragraphs 9, 10, 11 and 12, and by each of said acts, Respondent did refuse to bargain collectively, and is refusing to bargain collectively, with the representative of its employees, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) of the Act

15. The activities of the Respondent described above in Paragraphs 9, 10, 11, 12, 13 and 14, occurring in connection with the operations of the Respondent described above in Paragraphs 2 and 3, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts of the Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 17th day of January, 1967 at 10:00 a.m. Eastern Standard Time, in Court Room No. 5 Ninth Floor, Municipal Building, Akron, Ohio, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in Formal Hearing Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an orginal and four (4) copies of an answer to said Complaint within ten (10) days of the service thereof, and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be signed and issued by the Regional Director for Region 8, this 22nd day of November, 1966.

/s/ Philip Fusco
PHILIP FUSCO, *Regional Director*
National Labor Relations Board
Region 8

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

Case No. 8-CA-4202

**Answer**

Now comes Pittsburgh Plate Glass Company by its attorney and pursuant to Section 10 (b) of the National Labor Relations Act, as amended, 29 U.S.C. Section 151 et. seq., herein called the Act, and Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, files this Answer to the Complaint in the above entitled case.

1. Respondent admits the allegations set forth in paragraphs 1(A), 1(B), 2, 3, 4, 5, and 6(A) of the Complaint.

2. Respondent denies the allegations, and each of them, set forth in paragraphs 6(b), 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the Complaint.

Accordingly, the Assistant Counsel of Pittsburgh Plate Glass Company has caused this Answer to the Complaint to be signed and filed this 30th day of November, 1966.

/s/ MARK C. CURRAN
MARK C. CURRAN, *Assistant Counsel*
Pittsburgh Plate Glass Company
One Gateway Center
Pittsburgh, Pennsylvania 15222

CERTIFICATE OF SERVICE

TXD-196-67
Barberton, Ohio

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case No. 8-CA-4202

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION and LOCAL UNION NO. 1, ALLIED CHEMICAL AND ALKALI WORKERS OF AMERICA

RICHARD A. DUROSE, ESQ., for the General Counsel, NLRB

MORTIMER RIEMER, ESQ., Cleveland, Ohio, for Local No. 1, the Charging Party.

MARK C. CURRAN, ESQ., Pittsburgh, Pa., for the Respondent.

**Trial Examiner's Decision**

STATEMENT OF THE CASE

JAMES V. CONSTANTINE, Trial Examiner: This case is before a Trial Examiner of the National Labor Relations Board upon a complaint issued on November 22, 1966, by the General Counsel of the Board (through the Regional Director for the Eighth Region, at Cleveland, Ohio) pursuant to Section 10(b) of the National Labor Relations Act, herein called the Act. 29 U.S.C. 1960(b). That complaint is based on a charge filed on April 12, and amended on November 22, 1966, by Local Union No. 1, Allied Chemical and Alkali Workers of America, against Pittsburgh Plate Glass Company, Chemical Division, Respondent herein. Essentially, the complaint alleges that Respondent has infringed Section 8(a)(1) and (5) of the Act, and that such conduct affects commerce within the meaning of Section 2(6) and (7) thereof. Respondent has answered, admitting some facts but denying that it perpetrated any unfair labor practices.

Pursuant to due notice this cause came on to be heard before me at Mansfield, Ohio, on January 17, 1967. All parties were represented at and participated in the hearing and were granted full opportunity to introduce evidence, examine and and cross-examine witnesses, submit briefs, and offer oral argument. Respondent's motions to dismiss at the close of the hearing were denied. Briefs of superior excellence have been received from all parties.

This case presents the question of whether an employer has failed to bargain collectively with the majority representative of his employees (a) by unilaterally changing the pension benefits of retired employees provided for in a collective-bargaining contract, and (b) whether the employer's conduct constitutes a unilateral change.

Upon the entire record in this case, and from my observation of the witnesses, I make the following:

## Findings of Fact

### I. Jurisdiction

Respondent, a Pennsylvania corporation, is engaged in manufacturing and selling glass and glass products. From its Barberton, Ohio, plant, which is the only facility involved in this proceeding, Respondent annually ships goods valued in excess of $50,000 to points located outside the State of Ohio. I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction over Respondent in this proceeding.

### II. The Labor Organization Involved

Local Union No. 1, Allied Chemical and Alkali Workers of America, herein called Local No. 1 or the Union, is a labor organization within the contemplation of Section 2(5) of the Act.

## III. The Unfair Labor Practices

Virtually no dispute exists as to the facts, so that fundamentally an issue of law has been unfolded by the record.

Since January 1949, the Union has been the exclusive representative for the purposes of collective bargaining of the employees of Respondent in a unit composed of

> All hourly rated employees at the Respondent's Barberton, Ohio, plant, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

I find that said unit is appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Since 1949, Respondent and the Union have negotiated several collective-bargaining contracts, as more fully described below.

In the summer of 1950 the parties negotiated a collective-bargaining contract which, among other things, provided for medical insurance for employees and, for the first time, contained a pension plan. During negotiations the parties agreed orally, but did not incorporate into the contract or otherwise reduce to writing, that retired employees could participate in the above-mentioned medical insurance benefits by paying a stipulated premium. No company contribution was made towards that premium. Such premium was deducted from pension payments. This arrangement as to those on retirement continued without alteration until 1954, when it was unilaterally changed by Respondent. Then the new benefits for retirees remained unchanged until 1960.

In the fall of 1959, during discussions relating to extending their collective-bargaining agreement, the parties bargained for and agreed to modify their pension agreement and the medical insurance benefits of retirees on pension. This change, which went into effect in 1960, granted retired

pensioners an increase in the maximum daily amount of hospitalization benefits. Unlike its predecessor, this agreement concerning medical insurance benefits for retirees was incorporated in a written document. See Company exhibit 1. During the above discussions the Company challenged the Union's right to negotiate pensions and medical insurance programs for employees who had already retired.

Again, in 1962, the parties, while negotiating a new collective-bargaining contract, bargained for and agreed upon certain modifications of Respondent's pension plan, but left intact the medical insurance benefits of pensioners. See General Counsel Exhibit 4 for the Pension Plan. However, Respondent in a separate, contemporaneous understanding, which was embodied in a written instrument, for the first time became obligated to contribute towards the medical insurance premium of any employee who retired on or after June 28, 1962, and who elected to subscribe to such an insurance plan. Such contribution was $2 a month. See General Counsel Exhibit 2 and Respondent Exhibit 5. At the same time the parties also executed a collective-bargaining agreement in still another and distinct document. See General Counsel Exhibit 3.

During negotiations in 1964 for a new collective-bargaining agreement, the parties modified the medical insurance provisions for those already on pension whereby Respondent increased by $2 its contributions toward the cost of premiums for medical insurance for such pensioner, thus contributing $4 a month toward the premium. It was further agreed that this $2 increase would be eliminated by Respondent in the event that "Medicare or a program of Government type insurance" was instituted. See General Counsel Exhibit 5. This modification was in the form of a separate supplement or addendum to a bulky document synchronously adopted as a collective-bargaining contract. See General Counsel Exhibit 6 for the latter contract.

About November 23, 1965, the parties met to discuss certain pending grievances. When their talks upon other sub-

jects were concluded the Union requested Respondent to negotiate a program of insurance which would provide retirees, whether covered by Medicare or not, with benefits not provided by Medicare. At this time Medicare had been passed by Congress to go into effect in 1966. Respondent's labor relations director, John Rodgers, replied that the Company would take this matter under advisement and give the Union an answer "at an appropriate time." Shortly before March 21, 1966, the Union reminded the Company's labor relations supervisor, David Redle, that it had not received a reply to its said request of the previous November; but although Redle professed ignorance thereof, he promised to refer it "to the proper people." He did. Thereafter the Company's officials thoroughly considered it. About March 10, Rodgers called Williams to express the belief that Respondent "would have something" in a week or 10 days.

Then on March 21, 1966, Industiral Relations Director Rodgers asked Vice President Williams of Local No. 1 to meet with Rodgers and Plant Manager Harris at about 3 p.m. They did meet at the appointed time. A committee from the Union accompanied Williams thereat. Asserting that the Company had an answer to the Union's question of the previous November, Rodgers insisted that by virtue of the agreement reached in 1964, Respondent was entitled to "reclaim" $2 of its $4 contribution if a Medicare program was adopted. Continuing, Rodgers observed that Medicare had been enacted and that, beginning July 1, 1966, the Company would "reclaim" $2 a month from each retiree receiving the $4 a month contribution. Further, Rodgers said that Respondent intended to "cancel out" its insurance program for all retirees because Medicare had rendered this feature of retirement benefits practically useless, but added that $3 a month would be paid to such pensioners towards the cost of subscribing to Medicare. This meant an additional $1 a month to those receiving a $2 a month contribution after July 1, 1966, when $2 of the above $4 would be "reclaimed."

Rodgers then commented that the present insurance program for pensioners, among other things, prevented payment of insurance benefits if another group plan paid similar group benefits, and he considered that Medicare qualified as such other group plan.

Union Vice President Williams took issue with Rodgers on this. Although Williams conceded to Rodgers that as a matter of contract the Company was empowered to cease making the extra $2 contribution, Williams insisted that Respondent was not entitled to cancel the insurance of pensioners since it was guaranteed by the agreement of 1964. In addition, Williams contended that the Company was powerless to make such a unilateral change without bargaining with the Union on it because it was a bargainable subject. Finally, Williams posed the question of what Respondent would do for retirees under 65 who were ineligible for Medicare and for all other pensioners, regardless of age, who were not qualified to apply for Medicare. Rodgers replied that Respondent would have to work out a program for such retirees as well as for their wives. Also, Rodgers mentioned that insurance for retirees was optional with them, that the Union had no right to bargain for employees who had retired, and that the Company's bargaining with another union for changes in benefits of persons already retired, to which Williams adverted, involved "a different division under a different management." Williams did not question the assertion of Rodgers that insurance was optional with retirees.

On March 23, 1966, Plant Manager Harris telephoned to Union Vice President Williams that, upon reconsideration, the Company had rescinded its decision to cancel the insurance benefits of pensioners and, instead, would offer each group of retirees by mail an option to cancel or retain their insurance and, to those who chose to cancel, would contribute $3 a month to be used toward the cost of premiums for those electing to be covered by Medicare. (Such letters were sent later, and copies thereof were furnished to Local

No. 1. See General Counsel Exhibit No. 7.) Williams reiterated his position of March 21, 1966, and again demanded that this was a bargainable matter.

On October 11 and 20, 1966, in discussing a new collective-bargaining agreement, the Company twice orally proposed to pay a $3 contribution for those retirees electing to cancel their insurance, in effect reiterating its position taken on March 23, 1966. This was unacceptable to the Union. This proposition was also submitted in writing on October 11, 1966. See General Counsel Exhibit 8, p. 4. The Union rejected it.

No further oral or written communications concerning medical insurance benefits have passed between the parties.

*Concluding findings and discussion*

In his brief, the General Counsel has vigorously and ably contended that Section 8(a)(5), amplified by Section 8(d), imposes upon an employer a duty to meet and confer with a union with respect to wages, hours, and other terms and conditions of employment, and that this obligation "prohibits unilateral changes in conditions of employment which are mandatory subjects of bargaining or unilateral changes which modify contractual terms or conditions of employment." Of course this accurately portrays the present state of the law. *George E. Light Boat Storage, Inc.*, 153 NLRB 1209, enforced, 64 LRRM 2457 (C.A. 5). It is binding upon me, and I shall follow it to the extent that the facts found herein render it pertinent. Hence, the initial question is to determine whether the record discloses that Respondent has failed to meet and confer with Local No. 1 upon wages, hours, and other terms and conditions of employment regarding employees in the unit heretofore found to be appropriate.

In this connection, I find that pensions and health insurance are mandatory subjects of bargaining with respect to

employees in the unit above described. *Phelps Dodge Copper Corp.*, 101 NLRB 360, 379, and cases there cited; *Inland Steel Co.*, 77 NLRB 1, 170 F. 2d 247 (C.A. 7). And I further find that Respondent did not confer with the Union regarding the proposed changes in the health insurance benefits of retirees as set forth in General Counsel Exhibit 7. While it is true that Respondent had mentioned to the Union that it intended to make such offers to the retirees, it is equally patent that Respondent refused to discuss such proposals with the Union and expressly disagreed with the Union when the latter maintained these were bargainable matters. Hence, I find that Respondent's statements to the Union relative to such announced modifications do not rise to the stature of negotiations embraced by the statutory definition of "to bargain collectively" in Section 8(d) of the Act.

The record is barren of any evidence that Respondent altered, changed or modified unilaterally any pension benefit to be received in the future by employees now in the appropriate unit. Accordingly, the allegations of the complaint alleging such unilateral action have not been sustained, and I shall recommend dismissal of the complaint as to these allegations.

One other matter may be disposed of at this stage of the decision, i.e., the reduction of Respondent's contribution to the insurance premiums from $4 to $2 a month. Since the contract vested this privilege in Respondent—a contention which the Union did not dispute—no refusal to bargain may be based upon Respondent's unilateral reduction of its contribution from $4 to $2 a month. Accordingly, upon this segment of the case no violation of Section 8(a)(5) has been established.

Since I have found that Respondent has refused to meet and confer with the Union regarding changes unilaterally to be made by Respondent, the question is whether such refusal (except as to the lawful decrease of $2 a month described above) constitutes an infringement of Section

8(a)(5) of the Act which enjoins an employer to "bargain collectively with the representatives of his employees." This in turn depends on whether retired persons no longer employed in the unit enjoy the status of employees within the contemplation of Section 8(a)(5) of the Act.

It is my opinion, and I find, that pensioners and retirees are not employees as defined by Section 2(3) of the Act (*Public Service Corporation,* 72 NLRB 224, 230), and therefore, are not employees within the meaning of Section 8(a)(5). Hence, they are not employees in the unit which Respondent represents. Therefore their pensions and other benefits received as retirees and pensioners are not the mandatory subjects of collective bargaining, and Respondent is not under a statutory onus to bargain thereon. While no express Board or court adjudications so hold, certain determinative factors point to this conclusion.

1. In the first place, pensioners patently are not employed in the unit. Not only are they not now employed by Respondent, but they have no reasonable expectation of being reemployed under the terms of Respondent's pension plan Agreement with the Union. Of course I recognize that persons may remain in a unit as employees while not actually employed therein; but in such instances, i.e., when on sick leave, other leave, or layoff status, the conditions of nonemployment contemplate not only a continuation of the employer-employee relationship but also a resumption of or return to work in the predictable future.

And I further acknowledge that in some instances a person not employed in a unit may be treated as an employee for some purposes of the Act. Thus, an applicant for employment (*Phelps Dodge* v. *N.L.R.B.,* 313 U.S. 177), or a registrant at a hiring hall (*Houston Chapter, A.G.C.,* 143 NLRB 409, 412-413), or an independent contractor (*N.L.R.B.* v. *Hearst Publications,* 322 U.S. 111), or a striker (Section 2(3) of the Act), or persons losing jobs upon a change in ownership (*Chemrock Corporation,* 151 NLRB

1074), all have been held to be employees under the Act. But in all these situations a fundamental ingredient—absent in the instant case—has been the reasonable prospect that an employer-employee status was capable of being developed. And cases like *Briggs Mfg., Corp.*, 75 NLRB 569, cited by the Union, are distinguishable, because there the person involved—unlike the pensioners here—was a member of the working class.

However, I am unable to accept Respondent's argument that pensioners may not be treated as employees because they lose their membership in the Union when they retire. This conclusion follows as a corollary of the rule that a labor organization may act as a collective-bargaining representative of employees in a unit regardless of whether it admits such employees to its membership. *F. C. Russell Company,* 115 NLRB 1015 n.5. Therefore, union membership is not a compelling factor on the issue here. Nevertheless, to reject this contention does not alter the result reached herein.

2. Secondly, in comparable situations the Board has considered persons not employed in a unit as not embraced by that unit, even though they formerly may have been part of it. Thus, when employees in a unit are promoted to supervisors they thereby are excluded from the unit and, so long as they retain their supervisory capacity, the bargaining representative of the unit may not as a matter of right require bargaining with respect to them. *Retail Clerks International Association, et al.,* 96 NLRB 581; *N.L.R.B.* v. *Retail Clerks,* 186 F. 2d 371, 31 LRRM 2606, 2609, 203 F. 2d 165 (C.A. 9).

Further, the Board has specifically held that retired persons formerly employed in a unit are ineligible to vote in an election to determine whether a collective-bargaining agent shall represent the employees currently working in that unit. *Taunton Supply Corp.,* 137 NLRB 221, 223; *W. D. Byron & Sons,* 53 NLRB 172, 175. If retired persons are excluded from a unit for the purpose of voting for a repre-

sentative of that unit, manifestly they also should be eliminated from the unit for purposes of collective bargaining relating to employees in that unit.

Upon this aspect of the proceeding, the following situation is not difficult to visualize. Suppose that union A represents the employees in unit X in the plant of an employer, and that union B represents the employees in unit Y of the same employer in the same plant. If employee C transfers from unit X to unit Y, patently union A no longer represents employee C and may not bargain for him because he no longer is employed in unit A. Citation of authority would be supererogatory. Nor may an employer demand that a Union bargain as to units whose employees work for another employer. See *United Mine Workers* v. *Pennington*, 381 U.S. 657, 666-667. Cf. *Local 24* v. *Oliver*, 358 U.S. 283.

A final example suffices. It is not unusual for one union, A, to be displaced as the bargaining representative of a unit by another union, B, or no union. In such instances, while it is true that rights under the contract between union A and the employer may survive even after union A has been replaced by union B or no union (See *John Wiley & Sons, Inc.*, v. *Livingston*, 376 U.S. 543), it is equally true that union A may not insist upon bargaining for employees in the unit. Cf. *L. B. Spear and Company*, 106 NLRB 687, 689; *Retail Clerks* v. *Lion Dry Goods, Inc.*, 369 U.S. 17. See *Southern Conference of Teamsters* v. *Red Ball Motor Freight, Inc.*, 64 LRRM 2545, 2549 (C.A. 5). If material, I find that Local No. 1 herein is not remediless, for I find that, since rights survive under the contract, suit may be brought, either for damages, specific performance, or both, to remedy any breach thereof. Cf. *Modine Mfg. Co.* v. *I.A.M.*, 217 F. 2d 326 (C.A. 6); *McGuire* v. *Humble Oil Co.*, 355 F. 2d 352 (C.A. 2).

3. I find that the pensioners' benefits under the contract are vested and survive the expiration of the contract. *N.L.R.B.* v. *Frontier Homes Corp.*, decided 2/6/67 (C.A. 8);

*United Steelworkers of America* v. *Porter*, 64 LRRM 2201 (D.C.W.D. Pa.). In my opinion *N.L.R.B.* v. *Cone Mills Corporation* 64 LRRM 2436 (C.A. 4), is distinguishable, for the nature of the rights there involved dissolved with the termination of the contract Additionally, I find that the Union in the instant case at most has demonstrated that Respondent has failed to abide by its obligations under the contract. Of course, a breach of contract does not preclude a finding that Respondent thereby also committed an unfair labor practice. *Smith* v. *Evening News Assn.*, 371 U.S. 195; *C. & C. Plywood* v. *N.L.R.B.*, U.S. , 64 LRRM 2065; *N.L.R.B.* v. *George E. Light Boat Storage, Inc.*, 64 LRRM 2457 (C.A. 5). Nevertheless, a breach of contract is not *per se* an unfair labor practice; and, since the record discloses a breach without more, as found above, I conclude that Respondent's purported unilateral modification of the medical benefits of retirees merely subjects Respondent to an action or suit based upon the contract provisions.

In this area of the case I do not pass upon the question of whether an employer and a union may, by contract, reduce the vested benefits of retirees. Cf. *Upholsterers' Union* v. *American Pad Co.*, 64 LRRM 2200 (C.A. 6). It would seem, however, that fixed rights may not be adversely affected by the parties to a collective-bargaining contract. Thus, I doubt that an employee can be compelled to disgorge some of his wages already received because of subsequent negotiations between the Union and the employer, or that employer contributions actually made to a savings plan may later be withdrawn by agreement between the employer and the Union. In *Oliver Corporation*, 162 NLRB No. 68, the matters sought to be bargained about were not vested and also related to present working conditions; hence, it was not fatal that some of these matters pertained to employees who had already been terminated.

Certain arguments of the General Counsel and the Union deserve comment at this point.

First, they contend that these benefits are part of the overall collective-bargaining contract negotiations and, therefore, affect employees admittedly in the unit. But this means no more than that pensions for employees in a unit are subjects of mandatory collective bargaining, a fact which I have already found and which is not seriously disputed by Respondent. But the question is not whether pensions may be negotiated for employees in the unit; rather, it is whether the Union may bargain for retirees who are no longer employed in the unit. Further, the Union herein may not insist upon bargaining for employees in another unit, such as office clericals, even though (a) some or all of those clericals are transferees from the Unions's hourly rated unit, and (b) the wages and other benefits received by the office clericals manifestly affect employees in the hourly rated unit. Hence, I conclude that this argument is not well taken.

Then again, the argument is pressed that pension benefits are deferred earnings or benefits, and therefore, they constitute mandatory subjects of collective bargaining. It is axiomatic that pensions for employees admittedly in the unit are subjects of mandatory collective bargaining, and I have already so found. *Inland Steel Co.*, 77 NLRB 1, enforced, 170 F. 2d 247 (C.A. 7); *Phelps Dodge Copper Corp.*, 101 NLRB 360, 379. It may also be conceded that pension plans may be classified as deferred earnings or benefits and, as such, are mandatory subjects of collective bargaining when comprehending those employees actually employed in a unit. But this decides nothing, for the question in this case is whether such deferred earnings may be the compulsory subject of further negotiations after those entitled to the same are no longer in the unit and are ineligible to return to the unit. This question must be resolved by ascertaining the status of those receiving the pensions; and, since they do not qualify as employees under Section 2(3) of the Act, Sections 8(a)(5) and 9(a) do not become operative as to them. Accordingly, I find that this contention may not be sustained.

General Counsel also cites, as tending to uphold his position, cases interpreting the word "employees" in Title III of our Act. Apart from the fact that the word "employees" in Title III may sometimes connote different classes from "employees" in Title I (*United States* v. *Ryan*, 350 U.S. 299, 306-307), these cases to which the General Counsel alludes in my opinion do not stand for the proposition that pension benefits actually received by retirees are subjects of compulsory collective bargaining. He refers to *Local 688* v. *Townsend*, 345 F. 2d 77 (C.A. 8); *Blassie* v. *Kroger Company*, 345 F. 2d 58 (C.A. 8); and *Garvinson* v. *Jensen*, 355 F. 2d 487 (C.A. 9). They merely hold that collective-bargaining contracts may lawfully provide that employees who have retired shall enjoy the benefits described in Section 302(c)(5) of the Act, and that such contracts may provide that such individuals shall receive such benefits after they retire and need not restrict benefits to employees working at the time.

But I have already found that the pension benefits to be received by an employee when he retires are subjects of mandatory collective bargaining and that an employer may be held accountable for failure to comply with a contract which contains such provisions. On the other hand, it is desirable again to stress that the issue in the instant case is not whether retirees may be beneficiaries of benefits pursuant to a collective-bargaining contract or whether suit may be instituted if contract clauses providing those benefits are not honored, but instead, the question is whether such benefits are subjects of further mandatory collective bargaining as to those persons who no longer are employed in the unit represented by the Union.

Finally, the General Counsel maintains that medical benefits enjoyed by retirees are subjects of permissive or voluntary collective bargaining within the purview of *N.L.R.B.* v. *Borg Warner Corp.*, 356 U.S. 342, and that, since the parties have voluntarily negotiated an agreement thereon, such agreement may not be unilaterally modified during the term of the contract except by complying with Section 8(d)

of the Act. Upon this aspect of the case I find that the foregoing benefits are subjects of permissive or voluntary bargaining (see *Mill Floor Covering, Inc.*, 136 NLRB 769), and that the parties have a contract or agreement covering them. Additionally, I find that the Board would require the parties to incorporate into a written document the terms of their understanding concerning this permissive subject of collective bargaining. *Associated Building Contractors of Evansville, Inc.*, 143 NLRB 678, 680. It follows, and I further find, that Section 8(d) proscribes mid-term modification of said agreement by unilateral action of either party.

But I am unable to find that Respondent has modified or changed this agreement. Although I find that Respondent wrote to retirees the letters set forth in General Counsel Exhibit 7, I find that such letters do not modify the agreement between Respondent and the Union. Initially, I find that they were not sent to present employees working in the unit. In addition, although the first letter in said series mentions that Respondent will make a $3 a month contribution towards Medicare, it is offered only to pensioners who are not enrolled in any medical plan provided by the collective-bargaining agreement. Hence, no change in the terms of that agreement is discernible in the language of this first letter.

The second, third, fourth, and fifth letters in said series offer retirees an election to accept Medicare or to continue in effect the current medical benefits conferred upon them by the contract between Respondent and the Union. I do not construe these last four letters as modifying said agreement, since employees were free to decline such offer, so that I find that they do not constitute a mid-term change of the contract contemplated by Section 8(d) of the Act. This situation is somewhat analogous that in which an employer offers an employee in one department, represented by a labor organization, an opportunity to transfer to another department, not represented by a union, where wages are different. In this latter event it would seem that, since the

employee is given a choice to retain his present position, the offer of another job at other wages does not amount to a mid-term unilateral change of the collective-bargaining contract.

Upon the basis of the foregoing findings of fact, and upon the entire record in this case, I make the following:

## Conclusions of Law

1. Local No. 1 is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent is an employer within the meaning of Section 2(2), and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Pensions and other benefits to be received by employees in an appropriate unit after they retire are subjects of mandatory collective-bargaining between the employer and the exclusive collective-bargaining agent selected by a majority of such unit.

4. Persons actually retired and receiving pensions and who have no reasonable expectation of being re-employed in the appropriate unit from which they retired are not employees within the meaning of Section 2(3) of the Act.

5. Pensions and other benefits received by persons after they retire from the appropriate unit in the manner set forth above are not subjects of mandatory bargaining, but are subjects of permissive or voluntary collective bargaining.

6. The pensions and other benefits of persons actually retired and involved in this proceeding are vested rights and survive the expiration of any one or more contracts creating such benefits.

7. Respondent has not committed any unfair labor practices as alleged in the complaint.

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is recommended that the Board dismiss the complaint herein in its entirety.

Dated at Washington, D. C.

James V. Constantine
Trial Examiner

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION and LOCAL UNION NO. 1, ALLIED CHEMICAL AND ALKALI WORKERS OF AMERICA

Case No. 8-CA-4202

### Decision and Order

The complaint in this proceeding alleges that Respondent (the Employer) violated Section 8(a)(1) and (5) of the National Labor Relations Act by unilaterally modifying a negotiated hospitalization and surgical insurance plan for retired employees which was part of an outstanding collective-bargaining agreement between Respondent and the Charging Party (the Union).

On April 14, 1967, Trial Examiner James V. Constantine issued a Decision finding that Respondent's conduct did not transgress the Act and recommending that the complaint be dismissed. The General Counsel, the Respondent, and the Charging Party filed exceptions and supporting briefs.[1]

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was

[1] The Respondent's and the Charging Party's requests for oral argument are hereby denied because the record, including the exceptions and briefs, adequately presents all of the issues.

committed.[2] Those rulings are affirmed. The Board has also considered the Trial Examiner's Decision, the exceptions and briefs of the parties, the briefs of the *amici curiae*,[3] and the entire record. We hereby adopt the Trial Examiner's findings and conclusions only to the extent that they are consistent with this Decision.

I. The Union has represented employees in an appropriate unit at Respondent's Barberton, Ohio, plant since 1949. In 1950 the parties negotiated a contract which included provisions for a pension and a hospitalization and surgical insurance plan. They also reached an oral understanding that retired employees could elect to participate in the insurance plan by contributing the total cost of insurance premiums which would be deducted from their pension payments. Doubtless this was a meaningful benefit because it enabled retired employees to enjoy health insurance protection at the group rate. Except for a unilateral improvement made by Respondent in 1954, this oral understanding was effectuated without change for 9 years.

In 1959 the parties negotiated an improvement in the insurance plan for retired employees by increasing the maximum amount of daily hospitalization benefits. The parties also reduced to writing their understanding respecting the participation rights of retired employees.[4]

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[2] The Trial Examiner inadvertently stated in his Decision that the hearing was held in Mansfield, Ohio. In fact it was held in Akron, Ohio.

[3] *Amicus curiae* briefs were filed urging aproval of the Trial Examiner's Decision by the Chamber of Commerce of the United States and the National Association of Manufacturers. Briefs urging reversal of the Trial Examiner's Decision were filed by the American Federation of Labor and Congress of Industrial Organizations, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, the United Steelworkers of America, AFL-CIO, and the Amalgamated Transit Union, AFL-CIO.

[4] In these 1959 negotiations Respondent apparently challenged the right of the Union to bargain about such benefits for retired employees. Nonetheless, Respondent did bargain with the Union about this subject in 1959 and in subsequent contract negotiations.

During contract negotiations in 1962, the insurance plan was improved when Respondent agreed to contribute $2 per month towards the cost of insurance premiums for employees who retired after June 27, 1962, and who elected to participate in the plan. In these negotiations the parties also agreed to make age 65 the mandatory retirement age.

In their negotiations for a new labor contract in 1964, the parties again bargained about insurance benefits for retired employees. The Respondent agreed to increase its monthly contribution for each participating retired employee from $2 to $4 per month. However, anticipating Congress' enactment of Medicare legislation, the parties agreed that upon that occurrence the Respondent could reduce its contribution by the amount of the 1964 increase (i.e., $2 per month).

On November 23, 1965, following the enactment of Medicare and during the term of their outstanding collective-bargaining agreement, the Union asked the Respondent to engage in mid-term bargaining for the purpose of negotiating insurance benefits for retired employees of a type not available under Medicare. Respondent's industrial relations director, Rogers, took the request under advisement. Several months went by without any response. Then in March 1966, the Union reminded Respondent of the earlier request for mid-term bargaining.

At a meeting held on March 21, 1966, Respondent gave its answer. First, Respondent said that it intended, because of the intervening passage of Medicare, to reclaim its contribution of the extra $2 per month for retired employees under the terms of the 1964 contract beginning July 1, 1966, the effective date of Medicare. Second, Respondent said that it intended to cancel the negotiated health insurance plan for retired employees because, in Respondent's opinion, the enactment of Medicare made this insurance useless. (Respondent also contended that a nonduplication of benefits provision in the insurance plan precluded payment under the negotiated health insurance plan of those benefits which

were also provided by Medicare.[5]). Third, Respondent announced that it had decided to contribute $3 a month for each retired employee to be applied towards the cost of subscribing to supplemental Medicare coverage. Fourth, Respondent rejected the Union's request to bargain for a supplementary insurance plan and challenged the Union's right to bargain for retired employees at all.

The Union conceded Respondent's contract right to reduce its contribution, but challenged Respondent's right unilaterally to abrogate the provisions of the contract entitling retired employees to participate in the health insurance plan and requiring the Respondent to contribute a minimum of $2 per month for this purpose.

Two days later, on March 23, 1966, Respondent told the Union that, having reconsidered its position, Respondent would leave the health insurance plan for retired employees "intact." Instead, Respondent said that it intended to send letters to retired employees announcing that they could choose to withdraw individually from the negotiated health insurance plan and, in lieu thereof, that Respondent would contribute $3 per month towards supplemental Medicare premiums. The Union objected to this proposed action, asserting the right to bargain about any change in the contract concerning the health insurance plan. The Respondent again refused to bargain with the Union for a supplementary insurance plan.

The next day, March 24, Respondent sent the aforementioned letters to retired employees with the result that approximately 15 of 190 canceled their participation in the negotiated health insurance plan. In response to the Respondent's actions, the Union filed the instant charges.

In October 1966, Respondent proposed that the termination date of the existing labor agreement be extended

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[5] The Charging Party challenges the correctness of this interpretation of the insurance plan. But it is unnecessary to, and we do not, reach this question.

from October 20, 1967, to October 19, 1970. Included in that proposal was a clause reiterating Respondent's position taken in March 1966, which the Union rejected.

II. The Trial Examiner found the aforementioned facts, which are not in controversy. He then recommended dismissal of the complaint for the reason that, in his opinion, retired employees are not embraced by the policies of the statute nor by its definition of "employee," [6] and, therefore, that the Respondent was under no statutory duty to refrain from unilateral action with respect to retired employees. While acknowledging that pensions and health insurance benefits are statutory subjects of bargaining, he concluded, nonetheless, that the obligation which Congress has laid on employers and unions to bargain about these subjects abruptly ends on the date that employees retire from active employment.

In one significant respect, the Trial Examiner's findings are not clear to us. He found at the outset of his Decision that Respondent had "refused to meet and confer with the Union regarding changes unilaterally . . . made by Respondent," [7] yet he concluded his Decision with the finding that these unilateral changes did not modify the collective-bargaining contract "since employees [meaning retired employees] were free to decline" [8] the Employer's offer which constituted the unilateral change.

We disagree both with his interpretation of the statute and with his conclusion that Respondent's unilateral change in the insurance plan for retired employees was not a modi-

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[6] Section 2(3). "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment . . . ."

[7] Trial Examiner's Decision 196-67, p. 5.

[8] Trial Examiner's Decision 196-67, p. 9.

fication of the subsisting collective-bargaining agreement. From our study of the Labor Act, its policies, its legislative and decisional history, we conclude: First, that retired employees are "employees" within the meaning of the statute for the purposes of bargaining about changes in their retirement benefits; second, that bargaining about changes in retirement benefits for retired employees is in any event within the contemplation of the statute because of the interest which active employees have in this subject; and, third, that bargaining about such benefits is fully consonant with the statutory requirement that "wages, hours, and other terms and conditions of employment" be subject to the institution of collective bargaining envisioned by the Act.

III. The statutory question raised here is an important one because of its obvious significance to ever-increasing numbers of retired workers and their dependents. It is no less important to current employees. That it arises for the first time more than 30 years after the initial passage of the Labor Act underscores emerging patterns in collective bargaining which have resulted in earlier retirement for employees on terms which include both retirement income and protections against the health hazards of advancing age.[9] At the same time the life expectancy for Americans is greater than ever before [10] which, in turn, increases their reliance on retirement benefits.

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[9] See Welfare and Pension Plans Disclosure Act, 1958, Section 2(a), 72 Stat. 997, 29 U.S.C. Section 301(a):

> The Congress finds that the growth in size, scope, and numbers of employee welfare and pension benefits plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest: that they have become an important factor affecting the stabiliy of employment and the successful development of industrial relations; . . .

[10] Bureau of the Census, *Statistical Abstract of the United States* (1967). p. 53.

It has long been settled that the statute enjoins employers and unions to bargain in good faith about pensions and health insurance benefits to be enjoyed by employees upon their retirement. *W. W. Cross & Co.*, 77 NLRB 1162, 1163-1164, enfd. 174 F. 2d 875, 877-878 (C.A. 1); *Inland Steel Company*, 77 NLRB 1, enfd. 170 F.2d 247 (C.A. 7) cert. denied 336 U. S. 960. It is equally settled that unilateral changes in negotiated pension and insurance plans violate the statute. See *General Motors Corp.*, 81 NLRB 779, 780-781, enfd. 179 F.2d 221 (C.A. 2); *The Scam Instrument Corp.*, 163 NLRB No. 39, Trial Examiner's Decision at pages 7-8, enfd. 394 F.2d 884 (C.A. 7); *Charles E. Honaker*, 147 NLRB 1184, 1194. The single question to be decided here is whether these principles apply to such benefits for employees who have already retired.

Many unions and employers now bargain about pension and health benefits for retired employees, reflecting a "wide-spread understanding of the law shared in industrial circles and among members of the labor relations bar." [11] Indeed, the "trend of welfare plans toward the inclusion of retired persons is a fact of today's industrial life. . . ." *Bassie* v. *Kroger Co.*, 345 F.2d 58, 69 (C.A. 8). By enacting Medicare, Congress acknowledged and responded to the serious health needs of older Americans,[12] and, significantly, the Medicare amendments to Social Security were made available to al-

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[11] *United Drill & Tool Corp.*, 28 L.A. 677, 685 (Archibald Cox, arbitrator): [M]any companies, including the big steel and auto concerns, have promised to pay the more liberal pensions not only to those who are to retire in the future but also to those who have retired in the past . . . Common practice can hardly change the law but it does reflect . . . a wide-spread understanding of the law shared in industrial circles and among members of the labor relations bar.

See *Pacific Maritime Association*, 28 L.A. 600, 607-608. See also p. 17, *infra*.

[12] Health Insurance for the Aged Act, 79 Stat. 290, 42 U.S.C. Section 1395.

ready retired beneficiaries as well as to future beneficiaries.[13]

To the Trial Examiner the issue of this case turns simply on whether retired employees fall within the statutory definition of "employee." Finding that they do not, he concludes that no bargaining obligation is owed to them from the day that they retire, even with respect to changes in benefits which were negotiated on their behalf in the past when they were actively employed.

His Decision rests upon an anlysis of two distinct lines of cases which he loosely interweaves. First, he relies upon representation cases in which the Board has held that retired employees are not eligible to vote in Board-conducted elections to select a bargaining agent. *Public Service Corporation of New Jersey,* 72 NLRB 224, 229-230.[14] In these cases the Board decided only eligibility issues, intimating no opinion on the broader question involved here. Nevertheless, the Trial Examiner reasons that "if retired persons

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[13] See S. Rep. No. 404, Part I, 89th Cong., 1st Sess. 23-24 (1965):

> In past amendments to the Social Security Act, when new programs have been developed or when significant changes have been made to meet a national need, the Congress has followed the practice of extending the new or enhanced benefits not only to those who will become eligible for them in future years but also to the individuals then currently on the rolls. This has been done, of course, with the knowledge that the current beneficiaries on the rolls have not made contributions specifically for the increased benefits or the new benefits then being provided. Of course, this means that the benefits going to the already-retired group, represent in a sense an "unfunded" liability which has to be met out of future contributions. However, the practice has always been to cover the present beneficiaries. Basic to it is the recognition that the problem which such new legislation is designed to meet exists not only for those who will become eligible in the future but equally for present beneficiaries. *It may be noted that the same practices are often followed under private pension plans; namely, to extend benefit liberalizations to existing pensioners on the rolls when doing so for future pensioners.* [Emphasis supplied.]

[14] The Board there carefully noted that "even if pensioners were to be considered as employees, we believe that they lack a substantial community of interest with the employees who are presently in the active service of the Employers." 72 NLRB at 230.

are excluded from a unit for the purpose of voting for a representative of that unit, manifestly they should be eliminated from the unit for purposes of collective bargaining relating to employees in that unit." This conclusion fails to consider the nature of eligibility determinations which are not intended to be definitive rulings on employee status for all purposes. Eligibility "hinges on whether the employees have sufficient interest in the terms and conditions of employment to warrant their participation in the election of a collective-bargaining agent." *H. P. Wasson and Company,* 105 NLRB 373, 374. Even regular, active, full-time employees, who are hired after the election eligibility date, are normally not eligible to vote,[15] yet they are unquestionably "employees" about whom the employer and union have a duty to bargain in good faith. Conversely, persons who are not actively employed may be eligible to vote in some circumstances. Among these are persons on military leave, sick leave, or layoff. One, on the one hand, may be an active employee and not be eligible to vote, while, on the other hand, one may be an inactive employee and remain eligible to vote.

A more pertinent line of cases cited by the Trial Examiner involves unfair labor practice situations where the statute has been applied to persons who have not been initially hired by an employer or whose employment has terminated. Illustrative are cases in which the Board has held that applicants for employment[16] and registrants at hiring halls[17]—who have never been hired in the first place—as well as persons who have quit[18] or whose employers have gone out of business[19] are "employees" embraced by the policies of the Act. The Trial Examiner distinguishes these cases on the ground that in each of them "the person

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[15] *Wayne Knitting Mills, Inc.*, 1 NLRB 53, 55.

[16] *Phelps Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 117, 182-187.

[17] *Local 872, International Longshoremen's Association*, 163 NLRB No. 69.

[18] *Goodman Lumber Co.*, 166 NLRB No. 48.

[19] *Chemrock Corporation*, 151 NLRB 1074, 1076-79.

involved—unlike the pensioners here—was a member of the working class" or on the ground that in each of those cases there are "the reasonable prospect that an employer-employee status was capable of being developed." These are legally tenuous distinctions drawn from cases dealing with distinctly different issues. We believe, on the contrary, that these cases support the conclusion that retired persons are "employees" under the policies of the Act. They plainly show that the Act's protection is not narrowly limited to those who are recorded on the employer's current payroll. Indeed, employees, who have been actively employed for a sufficient number of years to have earned a pension, have deep legal, economic, and emotional attachments to a bargaining unit which measurably exceeds the attachments of others who have been held to be employees. If one can be an "employee" *before* he has been hired, or *after* his employer has gone out of business, or even while he is on active military duty thousands of miles away, we cannot agree that one who has spent his productive years in the bargaining unit is beyond the protective ambit of "employee" rights.

When an employee retires from the bargaining unit, most of the threads which once bound him to the unit are severed, except those which affect his retirement rights. But his retirement status is a substantial connection to the bargaining unit, for it is the culmination and the product of years of employment. To accept the Trial Eaminer's view that a retired employee is a legal stranger to the bargaining unit would require us to overlook obvious realities of human behavior as well as clear national policies which reject the view that workers are human machines [20] who, when their economic utility diminishes, may be cast aside and forgotten. [21]

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[20] Clayton Act, Section 6, 38 Stat. 731, 15 U.S.C. Section 17: "The labor of a human being is not a commodity or an article of commerce."

[21] See, e.g., Age Discrimination in Employment Act, 1967, Section 2, 81 Stat. 602, 29 U.S.C. Section 621; Welfare and Pension Plans Disclosure Act, 1958, Section 2, 72 Stat. 997, 29 U.S.C. Section 301; Executive Order 11141, 29 Fed. Reg. 2477 (1964).

Compensation for employment need not be synchronous with the performance of labor. Current services may be rewarded by benefits which arise (or continue) in the future, [22] and past services may be retroactively compensated with additional benefits. [23] Thus, it is not "active" employee status at the time of enjoyment of a negotiated benefit that controls whether it falls within "wages . . . [or] other terms and conditions of employment." The critical question is whether the benefit is founded on employment—past or present. [24] The health insurance plan here was negotiated for active employees to be enjoyed upon retirement, and its terms relate back to their active employment. For retired employees, the benefits paid to them in retirement are part of the return on their investment of a lifetime of labor. In some respects, an employee's retirement from active employment and his separation from the daily association with fellow workers is the very time when he is most vulnerable economically and most needs representation. This is the point at which his economic alternatives are most limited because of his age. It would virtually stand the Act on its head to hold that his employer is free to deal with him unilaterally and that the union may not represent him with respect to changes in the very plan which it negotiated for him.

The Board and courts have long held that a rigid definition of "employee" was not intended by Congress. *Phelps Dodge Corp.* v. *N.L.R.B.* 313 U.S. 177. In *Briggs Manucfacturing Company,* 75 NLRB 569, 571, the Board held that:

> This broad definition covers, in addition to employees of a particular employer, also employees of another

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[22] For example, pensions, *Inland Steel Co., supra,* and health, accident and life insurance, *W. W. Cross, supra.*

[23] See, e.g., *Bergen Point Iron Works,* 79 NLRB 1073, 1074 (retroactive application of contract terms).

[24] As the court stated in the *W. W. Cross* case, the term "wages" comprehends ". . . emoluments resulting from employment" and ". . . embraces within its meaning direct and immediate economic benefits flowing from the employment relationship." 174 F.2d 875, 878 (C.A. 1).

employer, or former employees of a particular employer, or even applicants for employment.

And the Supreme Court said in *N.L.R.B.* v. *Hearst Publications, Inc.*, 322 U.S. 111, 129, 130:

> . . . the broad language of the Act's definitions, which in terms reject conventional limitations on such conceptions as "employee," "employer," and "labor dispute," leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by *underlying economic facts* rather than technically and exclusively by previously established legal classifications. . . .
>
> *That term, like other provisions, must be understood with reference to the purpose of the Act and the facts involved in the economic relationship. "Where all the conditions of the relation require protection protection ought to be given."* [*Emphasis supplied.*]

The Court added:

> It is not necessary in this case to make a completely definitive limitation around the term "employee." That task has been assigned primarily to the agency created by Congress to administer the Act. Determination of "where all of the conditions of the relation require protection" involves inquiries for the Board charged with this duty. Everyday experience in the administration of the statute gives it familiarity with the circumstances and backgrounds of employment relationships in various industries, with the abilities and needs of the workers for self-organization and collective action, and with the adaptability of collective bargaining for the peaceful settlement of their disputes with their employers. The experience thus acquired must be brought frequently to bear on the question who is an employee under the Act.

The lesson of the precedents, therefore, is that employee status is not a question to be resolved by the mechanical ap-

plication of an *a priori* definition; it requires an appraisal of the "underlying economic facts" with "reference to the purpose of the Act." *Id.* For the reasons stated above, the "underlying economic facts" of this case persuade us that Congress intended to confer employee status on retired employees with respect to health insurance plans affecting them.

Our conclusion that retired employees' retirement benefits are embraced by the bargaining obligation of Section 8(a) (5) is also supported by other provisions of the statute. Section 302 (b) (5) (B) requires employer contributions to joint labor-management pension and health plans to be held in trust and to be administered by an equal number of employer and employee trustees. Congress' command that unions participate in the administration of such plans for retired employees through union appointed trustees requires unions to act as the "representatives" of retired employees. See *U.S.* v. *Ryan,* 350 U.S. 299. Moreover, in decisions interpreting the term "employees" in Section 302(b), appellate courts have held that it includes both "current employees and persons who were current employees but are now retired." *Blassie* v. *Kroger* Co., 345 F. 2d 58, 70 (C.A. 8); *Teamsters, Local 688* v. *Townsend,* 345 F. 2d 77 (C.A. 8); *Garvison* v. *Jensen,* 355 F. 2d 487 (C.A. 9). The Trial Examiner's Decision would create the anomaly that retired employees are not "employees" whose ongoing benefits are fit subjects of bargaining under Section 8(a) (5), while under Section 302(b) they are "employees" for the purpose of administering the same health insurance benefits. It would create the further anomaly that a union would not be entitled to act as the representative of retired employees under Section 8(a) (5), while subject to an explicit statutory duty to act as their representative under Section 302(b). [25]

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[25] The Internal Revenue Service has also concluded, in regulations interpreting the Revenue Code of 1954, that a benefit plan "is for the exclusive benefit of employees or their beneficiaries even though it may cover former as well as present employees . . ." Internal Revenue Service Regulations, Section 1.401-1(b)(4), 21 Fed. Reg. 7277 (1956).

We conclude, therefore, that retired employees are "employees" and that changes in benefits which are rooted in their years of active employment are encompassed within the bargaining obligation of the Act.

IV. Independent of our finding that retired workers are "employees," we also conclude that the subject of retirement benefits for retired employees is embraced by the bargaining obligation of the statute because it vitally affects active bargaining unit employees. At the very least, the Union and current employees have a legitimate interest in assuring that negotiated retirement benefits are in fact paid and administered in accordance with the terms and intent of their contracts, and Respondent's unilateral modification of its outstanding collective-bargaining agreement might itself be dispositive of this case. See p. 21, *infra*. But the interest of current employees is broader than assuring faithful contract compliance. [26]

Providing adequate economic security during retirement is a continuing concern of employers and employees. [27] For employers, the promise of retirement benefits aids in obtaining good workers, retaining them, and easing their acceptance of retirement. [28] For active employees, provisions for pension and health benefits after retirement are an integral part of their total compensation. *Inland Steel Company*, 77 NLRB 1, 4-5; *W. W. Cross & Co.*, 77 NLRB 1162, 1165, fn. 5. To them retirement benefits may be viewed as a wage in-

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[26] See *Upholsterers* v. *American Pad Co.*, 372 F.2d 427 (C.A. 6).

[27] See generally Senate Report No. 1734, Welfare and Pension Plan Investigation, pages 11-13, 84th Congress, 2nd Session (1956); President's Committee on Corporate Pension Funds, *Public Policy and Private Pension Programs*, pages 1-2 (GPO, 1965); Harbrecht, *Pension Funds and Economic Power*, pages 6-10 (The Twentieth Century Fund, 1959); Kittner, *Health Insurance and Pension Plan Coverage in Union Contracts*, 85 Monthly Lab. Rev. 274-277 (March 1962);

[28] See Strong, *Employee Benefit Plans in Operation*, pages 1-9 (BNA, 1951); Hickey, *The Establishment and Administration of Pension Plans in the Labor Relations Process*, 18 Vanderbilt L.R. 151, 157-158; Harbrecht, *Pension Funds and Economic Power*, pages 74-91.

crease foregone, "deferred wages" or "human depreciation." [29] Active employees, in contemplation of whether their own health needs will be adequately met upon their future retirement, have a selfish as well as a compassionate interest in bargaining about the adequacy and the administration of benefits for retired employees.

The parties to this case agreed in 1962 to mandatory retirement at age 65. An active employee's morale and his willingness to accept such retirement may be significantly influenced by the adequacy of negotiated postretirement health insurance to meet rising costs in the future. Thus, in bargaining about mandatory retirement and pension eligibility dates, the flexibility or inflexibility of retirement benefits is a factor which must enter the mix of considerations which will lead to agreement upon an overall retirement program.

It is not uncommon to group active and retired employees under a single health insurance contract with the result that ". . . active and retired rates [are] all combined in one rate or the retiree rate [is] subsidized by the actives." Foust, *Effect of Medicare on Privately Bargained Plans,* 19 N.Y.U. Conf. on Labor 273, 282 (1966). In such a combined plan for active and retired employees, like the plan in this case, it is the size and experience of the entire group which may determine insurance rates. In this respect the active employees could also benefit from the membership of retired employees in the group whose participation enlarges its size and might thereby lower costs per participant. Moreover, it is evident that changes in retirement benefits for retired employees affect the availability of employer funds for active employees. Therefore, the impact of decisions on such matters on active employees is direct and immediate.

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[29] See Harbrecht, *Pension Funds and Economic Power,* pages 91-99. However, we need not appraise the various differing conceptual approaches to retirement benefits other than to note they all implicitly recognize the employment connection of these benefits. See, Harbrecht, *op. cit.;* Ridgley, *The Report of the President's Cabinet Committee on Private Pension Plan Regulation: An Appraisal,* 63 Mich. L.R. 1258, 1264.

For these reasons, we also conclude that bargaining about changes in benefits for retired employees is an appropriate subject for bargaining because of its inextricable relationship to and impact on the wages, hours, and working conditions of those actively employed in the bargaining unit.

V. Our dissenting colleagues and the Respondent broadly challenge whether collective bargaining is a suitable means for resolving health and welfare questions affecting retired employees. Reduced to essentials, their position is that, once consummated, a collectively bargained plan of retirement benefits is frozen and immutable with respect to employees who have retired, unless an employer chooses to make changes unilaterally or voluntarily agrees to bargain over changes. This position is the antithesis of the statute's design that the collective-bargaining process should be a continuing one in which the parties share responsibility for the formulation, the execution, and the results of their agreement. Because the parties could agree in advance upon formulas which would provide for "flexible treatment" [30] of their retirement programs in anticipation of future contigencies, [31] it would be anomalous to hold that the statute does not encourage resort to collective bargaining in response to specific needs as they arise in the life of a retirement program.

Forced reliance on fixed, preretirement formulas has shortcomings which may lead to disappointing results in the operation of a plan. There may be a variety of changes in the experience of the covered group or in the operation or administration of the plan itself which the parties cannot foresee. The changing value of the dollar, rising medical costs, and other economic developments might alter the real level of benefits envisaged by the original formula. The parties may also reappraise their feelings as to the fair

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[30] *N.L.R.B.* v. *American National Insurance Co.*, 343 U.S. 395, 409.

[31] In anticipation of a long-term inflationary cycle, the parties might, for example, provide for an annual benefit increment of a certain percentage of the basic benefit or an increment tied to the cost-of-living index.

economic share owing to retired workers, just as society itself periodically reexamines its commitments to the elderly. In addition, insurance and health care plans are constantly developing new features and refinements.

There is also the impact of expanding government social welfare programs on private health plans. Recently, private health plans had to be meshed with Medicare in order to avoid duplication and to tailor supplemental, private coverage to needs of the particular employer and his employees. See Foust, *Effect of Medicare on Privately Bargained Plans,* 19 N.Y.U. Conf. on Labor 273-285; *Medicare and Negotiated Health Insurance for Workers,* 88 Monthly Lab. Rev. No. 9, pp. iii-iv (Sept. 1965); *Development in Industrial Relations,* 89 Monthly Lab. Rev. No. 4, p. 420 (April 1966). This was of course the very problem which gave rise to the instant case.

With respect to new problems which arise under a health insurance plan for retired employees, collective bargaining is not only a suitable method for exploring different solutions, but it is probably the most rational and effective method. A plan which has its inception in the collaborative process of a labor-management agreement reflects the assumptions, arguments, and aspirations—as well as the compromises—of the parties to that process. While the process of collective bargaining does not guarantee that its agreements will be wise, the process does help to assure the acceptability of those agreements because they were reached through the participation and the commitment of the parties most affected. Moreover, to deny collective bargaining a role in the development of health benefits plans for retired employees might undermine their viability. These private plans provide an important supplement to governmental social welfare programs,[22] and an effective method of dispute settlement will contribute to their purposefulness.

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[22] See President's Committee on Corporate Pension Funds, Public Policy and Private Pension Programs, pages 22-25 (GPO 1965).

Collective bargaining is a dynamic institution. It flexibly adapts to new challenges to industrial peace. As the Court of Appeals for the First Circuit has held, ". . . Congress did not intend to restrict the duty to bargain collectively only to those subjects which up to 1935 had been commonly bargained about in negotiations between employers and employees . . ."; rather it meant to compel bargaining ". . . with respect to any [employment] matter which might in the future emerge as a bone of contention between them . . . *W. W. Cross & Co.* v. *N.L.R.B.*, 174 F.2d 875, 878 (C.A. 1).[33] Thus an examination of current practices and trends in negotiations is relevant in determining what is a mandatory subject of bargaining. "Industrial experience is not only reflective of the interests of labor and management in the subject matter but is also indicative of the amenability of such subjects to the collective-bargaining process." *Fibreboard Paper Products Corp* 1. N.L.R.B., 379 U.S. 203, 211.

Bargaining on benefits for workers already retired is an established aspect of current labor-management relations. The United Auto Workers, the United Steelworkers, and the Amalgamated Transit Union, *amici curiae,* have cited many instances in which bargained increases in benefits have been obtained for retired workers. Several examples of collective bargaining on the integration of Medicare into private health plans can be found in 89 Monthly Labor Rev. No. 4, page 420 (April 1966). See also Foust, *Effect of Medicare on Privately Bargained Plans*, 19 N.Y.U. Conf. on Labor 273-285 (1966). This is pragmatic recognition that adjustments in retirement benefits for those already retired are suitable subjects for the collective-bargaining process. In our view holding these matters to be mandatory subjects of collective bargaining will "promote the fundamental purposes of the Act by bringing a problem of vital concern to labor and management within the framework established

[33] See also *Houston Chapter Associated General Contractors*, 143 NLRB 409, 413, enfd. 349 F.2d 449 (C.A. 5), cert. denied 382 U.S. 1026.

by Congress as most conducive to industrial peace." *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203, 211. [34]

Our dissenting colleague also argues that bargaining about benefits for retired employees will upset the "firm package of benefits [negotiated] for a fixed period." Our decision, however, does not introduce any element of uncertainty into the bargaining process that does not already exist. All employee benefits are subject to change at periodic intervals, either at the expiration of, or at times, fixed by, the contract itself. At such times the "firm package of benefits" previously agreed upon becomes flexible, and the alterations which result from such bargaining might require revision of the parties' expectations and future planning. The dissent overlooks the fact that the parties before us have bargained about retirement benefits for retired employees for nearly 20 years. Moreover, in this case, the Employer unilaterally changed the "firm package of benefits," to which our dissenting colleague does not object. The logic of the dissent thus suggests the tenuous proposition that the package of benefits is "firm" only as a limitation on the Union's right to bargain about benefits for retired employees, but not "firm" as a limitation on the Employer's right to make unilateral changes. The fact that many employers and unions, like the parties before us, have long bargained about changes in health and other benefit plans for retired employees negates the dissent's concern that this is not a suitable subject for bargaining.

The dissent also fails to take account of the practical manner in which many retirement benefits plans are created and administered. Typically, a retirement benefit plan is created

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[34] This conclusion does not, of course, preclude Respondent from bargaining hard, without concession, for broad areas of control over retirement benefits. See *N.L.R.B.* v. *American National Insurance Co.*, 343 U.S. 395, 408-409. However, Respondent here has gone beyond hard bargaining; it has taken the position that the Union has no statutory right to bargain for retired employees and that it may unilaterally make decisions affecting the rights of retired employees.

by a collective-bargaining agreement which is written only in general terms to provide for the creation of a plan and a method of financing. The details of eligibility, benefits,, and administration are normally incorporated in a subsequently drafted trust agreement, not in the collective-bargaining agreement itself. In fact, even trust agreements are often written in general terms to permit the trustees to adopt specific regulations concerning eligibility and other matters, subject to periodic changes which the trustees may make as circumstances dictate. See *Kosty* v. *Lewis,* 319 F. 2d 744 (C.A.D.C.),[35] cert., denied 375 U.S. 964. See also *In re Feldman,* 165 F. Supp. 190 (S.D.N.Y.). Thus, plans of this type are not static arrangements which, once executed, never change. They may, depending on their terms, undergo continuing change.

The dissent further asks "if the union may require bargaining over increases, could the employer not insist on decreases?" This a complex and many-sided question which does not admit of a single, definitive answer here, nor is it relevant to the precise issue before us. The answer will doubtless depend in part upon the circumstances of each case.

There is a variety of formulas for creating, financing, and administering pension and health plans, and the legal implications of each may differ. For example, health plans are of two main types: (1) those in which the collective-bargaining agreement specifies only the level of the employer's contribution, without specifying the benefits which will be provided from the contribution; and (2) those in which the collective-bargaining agreement specifies only the level of benefits which the employees will receive, without specifying the cost obligation which the employer will incur in pro-

[35] *Id.* at 748-749.

> We do not deny the authority of Trustees to revise pension eligibility requirements in the light of their experience. Flexibility of this kind seems especially necessary for the operation of this Fund, tied as it is to the fluctuating fortunes of the coal industry.

viding those benefits. How the parties choose to create, amend, or restructure such plans—consistent with their legal responsibilities to employee beneficiaries—is plainly a matter which Congress has entrusted to their judgment to be exercised in the light of their experience and the needs of affected employees. Normally, of course, retirement rights which are "vested" cannot be divested, but is does not inexorably follow that as a corollary "vested" rights may not be improved. What kinds of rights are "vested" in retired employees, when and how they vest, and, indeed, what "vesting" means in the context of a particular case are all problems of considerable importance which have not been entirely resolved in the courts and which are not presented by this case. See *Kosty* v. *Lewis, supra.* See also Harbrecht, *Pension Funds and Economic Power,* 53-61, 163-190; Strong, *Employee Benefit Plans in Operation,* 220-225. Thus, there is no necessity in this proceeding to decide whether and, if so, under what hypothetical circumstances an employer might be free to bargain about a decrease in retirement benefits being received by retired employees. We hold only that the duty to bargain about health care benefits does not end abruptly on the day that an employee retires and that his employer is not free on that day to deal with him unilaterally.

Finally, it is asserted that bargaining about retirement benefits for retired employees will raise difficult questions in the event of changes in employee representatives or changes in employers. But that problem is not new in any respect. Parties always bargain in the present in contemplation of continuity in their relations. A change in the employer's or the union's status may indeed require reexamination of their needs and resources at that time.

VII. The Trial Examiner concluded that Respondent's March 1966 actions did not constitute a modification of health benefits for the reason that Respondent gave retirees the choice between supplemental Medicare and the existing health plan. However, the possible methods of adjusting the

existing plan to Medicare's coverage may be considerably more varied than this unilaterally formulated choice offered by Respondent. See Foust, *Effect of Medicare on Privately Bargained Plans,* 19 N.Y.U. Conf. on Labor 273-285; *Medicare and Negotiated Health Insurance for Workers,* 88 Monthly Labor Rev. No. 9, pages iii-iv (Sept. 1965). Had the Union studied the matter and expressed its views in negotiations, a different option may have resulted. Whether Respondent's offer resulted in a desirable increase in retirement benefits is immaterial to our conclusion that Respondent was not free to act unilaterally; Respondent's establishment of a fixed, additional option in and of itself changed the negotiated plan of benefits. *C. & S. Industries, Inc.,* 158 NLRB 454, 457-458. Accordingly, we find that by unilaterally modifying its medical insurance plan for retired employees, Respondent violated Section 8(a) (5) and (1) of the Act.[36]

The General Counsel does not contend, nor do we find, that Respondent was obligated to engage in mid-term bargaining with the Union over its proposal to negotiate amendments in the health insurance plan. While the parties are of course free to engage in mid-term bargaining voluntarily, we hold only, on the record of this case, that the Respondent violated the statute by making unilateral changes in the terms of an outstanding contract with respect to benefits for retired employees.

## The Remedy

Having found that Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom, and from like or related conduct, and that

[36] Section 8(d) of the Act, which defines the bargaining obligation of Section 8(a)(5), expressly provides that, with exceptions not relevant here, "no party to such contract shall terminate or modify such contract." That the Respondent's unilateral modification of this contract might also give rise to an arbitration proceeding or an action for contract enforcement does not preclude the Board's exercise of its statutory obligation to remedy the unfair labor practice. *N.L.R.B.* v. *C & C Plywood Corp.,* 385 U.S. 421; *N.L.R.B.* v. *Acme Industrial Co.,* 385 U.S. 432.

it take certain affirmative action to effectuate the policies of the Act.

## Conclusions of Law

1. Pittsburgh Plate Glass Company, Chemical Division, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union No. 1, Allied Chemical and Alkali Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By instituting unilateral adjustments in the health insurance plan for its retired employees, Respondent violated Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pittsburgh Plate Glass Company, Chemical Division, Barberton, Ohio, its officers, agents, successors, and assigns, shall take the following action:

1. Cease and desist from:

(a) Refusing to bargain collectively with the above-named labor organization with respect to retirement benefits.

(b) Making unilateral adjustments in health insurance plans for retired employees, without first negotiating in good faith with the above-named Union concerning such adjustments.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board deems necessary and appropriate to effectuate the policies of the Act:

(a) Upon request of the above-named Union, rescind any adjustment in the health insurance plan for retired employees which Respondent unilaterally instituted.

(b) Mail a copy of the attached notice marked "Appendix" [37] to each retired employee and post copies in its plant in Barberton, Ohio. Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by the Respondent's authorized representative, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 8, in writing, within 10 days from the date of this Decision, what steps have been taken to comply herewith.

Dated, Washington, D.C.

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| Frank W. McCulloch, | Chairman |
| John H. Fanning, | Member |
| Gerald A. Brown, | Member |
| Howard Jenkins, Jr., | Member |

NATIONAL LABOR RELATIONS BOARD

(Seal)

Member Zagoria, dissenting:

I am constrained to dissent from the decision of my colleagues and I would affirm the result reached by the Trial Examiner.

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[37] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

Stripped to its essentials, this is a case where a union charges an employer unilaterally offered an additional option on its health plan for past pensioners. The Company said it did so because the Federal Medicare program made its own program obsolete, but, after union protests, assured the pensioners they could choose to retain the original program without change. On this narrow base, the Board majority has erected a decision with far-reaching implications in the area of mandatory duty to bargain.

I do not question in the slightest the well-established principle that retirement and profit-sharing plans and other forms of deferred compensation are mandatory subjects for collective bargaining when the proposed beneficiaries are employees currently on the payroll, and it is the wages and benefits to be paid for their labor which is the subject of the negotiations.

The question in the present case, however, is whether *retirees* are employees in this unit and whether there is a duty to bargain for these former workers placed upon the shoulders of the Company and a duty placed on the Union to represent them fairly in such negotiations. Under the Act a union's status as exclusive bargaining agent is with respect to all employees in the appropriate unit. The fact that retirees are no longer working for the employer, are not on the payroll, probably have no access to the plant, or hope of recall to employment does suggest that their status is accurately described as pensioners, not as employees. Apart from the question whether retirees are "employees" as defined by the Act, it is clear to me that retirees are not within the bargaining unit. The Board itself recognizes this for it does not, for example, permit retirees to vote in a certification election; nor would the Board, I am confident, permit a group of retirees to initiate a decertification election. Indeed, in this case, and the *amicus* briefs indicate this may not be atypical, retirees are limited only to honorary non-voting membership status by the union. This being so, the Act gives the union no authority or duty to represent them

and imposes no obligation on the employer to bargain about them with the union.

I am not persuaded by the majority's analogies to other areas of Board law, and their contention that the terms "employee" and "unit" are flexible enough to encompass the present situation. One area mentioned concerns the Board's election eligibility rules, under which, it is pointed out, some individuals are not permitted to vote, even though by the time of the election they are employees in the unit. However, this rule merely provides an administrative cutoff date for convenience in conducting elections, and to prevent payroll padding and other possible abuses. It does not in my view have relevance in an area where such considerations are not present.

The majority's reference to the *Wasson* line of cases is likewise not pertinent. The Board did, at one time, as in *Wasson*, make a distinction between unit inclusion and eligibility to vote. It no longer does so [38] for reasons precisely in point here: if an employee has sufficient interests to be included in the unit, he should be given a voice in the selection of a bargaining representative; if he is not given such voice, he should not be included in the unit.

Lastly, the cases involving discrimination are readily distinguishable. Though an employer may violate Section 8(a)(3) by refusing to hire particular employees, he does not normally violate Section 8(a)(5) by refusing to bargain about them, where they have not yet been made his employees.[39] As the Board has stated in a related context:

> We do not regard as controlling for purposes of determining for whom an employer must bargain those cases cited . . . which hold that the antidiscrimination provisions of Section 8(a)(3), (4) and (b)(2) of the Act forbid discrimination against applicants for employment. The antidiscrimination provisions refer to "employee" *generally*, whereas, unlike those provisions,

[38] *Denver-Colorado Springs-Pueblo Motor Way*, 129 NLRB 1184.

[39] *Piasecki Aircraft Corp.*, 123 NLRB 348, 349-350, enfd. 280 F.2d 575 (C.A. 3), cert. denied 364 U.S. 933.

> Section 8(a)(5) contains specific language requiring an employer to bargain for *"his* employees."[40]

The employees involved in the present case may have had no employment with the employer for 5, 10, or even 15 years. Unlike employees on sick leave or military leave, they have no prospect or intention of returning. In most respects retirees are in no different status than individuals who have left the bargaining unit for other reasons. In holding them to be within the unit for which the Union has a right to bargain, the Board is going beyond anything it has said or done in other types of cases.

Further, the majority position poses some difficult questions. For example, where the union currently representing employees in a bargaining unit is not the same one chosen by the retirees when they were actively employed, which union is the appropriate representative of the retirees? In some situations, the retirees may have earned their pension during a period in which the majority of employees rejected collective-bargaining representation. Is the present bargaining agent obligated to represent these retirees? If it does represent them, what is the extent of its duty of fair representation? Do the retirees have access to the Board or courts, if they feel they have been unfairly represented? May the bargaining agent require pensioners to comply with union-security requirements adopted by the active membership?

Now as to the bargaining itself, the statute requires bargaining "in good faith with respect to wages, hours, and other terms and conditions of employment," but retirees are no longer engaged in employment and the bargaining under discussion here relates to terms and conditions of employment long since completed. An oft-cited advantage of collective bargaining is that it results in a specific agreement satisfactory to both sides setting out a firm package of benefits for a fixed period. The company can base its prices and general business policy on this and workers can insist on exact payment of the agreed-upon benefits. If

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[40] *Page Aircraft Maintenance, Inc.*, 123 NLRB 159, 163, fn. 5.

mandatory bargaining is required, either party years later can reopen the agreement and unravel the provisions. Moreover, bargaining is a two-way street, and not only upward. Thus, if the union may require bargaining over increases, could the employer not insist on decreases?

As the majority view suggests collective bargaining is a dynamic institution. Indeed the examples cited of successful bargaining for increases in benefits for retired workers demonstrates that foresighted employers and unions, recognizing the mutuality of interest in retired workers, have used the institution of voluntary collective bargaining imaginatively. They have made adjustments although the affected group could no longer pose the threat of withholding its labor to implement its demands. They have found the subject suitable, even if not mandatory.

We are all understandably concerned that benefits promised to retirees be paid. In addition to individual court actions by aggrieved pensioners, many unions have voluntarily, and at considerable cost to themselves, undertaken to represent retirees in claims against employers and, similarly, many employers have voluntarily, also at considerable cost to themselves, undertaken to improve benefits to retirees, recognizing the impact of inflation on those receiving fixed benefits. Many unions and companies, recognizing their mutual interest in retiree benefits, have voluntarily worked out arrangements to improve past pensioners' rights and benefits. These voluntary agreements, these voluntarly representations, are a tribute to the humanistic quality of an enlightened labor-management relationship, but to hold that these matters are the subject of mandatory bargaining, while perhaps socially desirable, is, in my judgment, beyond the intent of the statute. I would therefore, like the Trial Examiner, dismiss the complaint.

Dated, Washington, D. C.

Sam Zagoria, Member
NATIONAL LABOR RELATIONS BOARD

## APPENDIX

## NOTICE TO ALL EMPLOYEES

PURSUANT TO
A DECISION AND ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
and in order to effectuate the polices of the
NATIONAL LABOR RELATIONS ACT
(As Amended)

we hereby notify our employees that:

WE WILL NOT refuse to bargain with LOCAL UNION NO. 1, ALLIED CHEMICAL AND ALKALI WORKERS OF AMERICA, with respect to retirement benefits.

WE WILL NOT unilaterally institute adjustments in health insurance plans for retired employees, without first negotiating in good faith with the above-named Union concerning such adjustments.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request of the above-named Union, rescind any adjustments made in the health insurance plan for retired employees which we unilaterally instituted.

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION
(Employer)

Dated By

(Representative)
(Title)

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This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1695 Federal Office Building, 1240 E. 9th Street, Cleveland, Ohio 44199, Telephone 216-522-5715.

**General Counsel Exhibit No. 2**

## MEMORANDUM AGREEMENT

The Pension Agreement between the Company and the Union which was executed January 6, 1960 shall be amended, effective June 28, 1962 as necessary to provide for such modification and changes as summarized below:

1) The name of the Company shall be changed from Columbia Southern Chemical Corporation to Pittsburgh Plate Glass Company, Chemical Division.

2) The amount of Normal Retirement Pension for employees who retire on or after June 28, 1962 shall be increased from $2.25 to $2.50 for past service credited prior to June 28, 1962 and from $2.50 to $2.80 for future service credited after June 27, 1962.

3) The Total and Permanent Disability Pension eligibility and payment sections shall be modified to provide that subsequent to June 27, 1962:

a The continuous service requirement shall be fifteen (15) years at age 60 or 20 years continuous service regardless of age, with payments of $5.00 per month per year of service prior to June 28, 1962 and $5.60 per month per year of service after June 27, 1962.

b Any employee who not later than June 27, 1964 becomes disabled within the meaning of the disability provisions of the Pension Agreement due to expire June 28, 1964 and such employee does not qualify under the terms of the applicable provisions of the new Pension Agreement due to expire June 28, 1967 such employee shall be entitled to the benefits he was entitled to receive under the prior Pension Agreement.

4) With respect to Part I, Section 1, Paragraph D and Part I, Section 2, Paragraph A (6) of the current pension plan covering the retirement of employees by "mutual agreement," all provisions, requirements, and amounts payable, will remain in effect.

In addition, the new Pension Agreement will be modified to provide that the Company may, at its sole option, retire an employee with fifteen (15) years continuous service at age 62. Employees so retired will receive the new Disability Pension payment amounts and such retired employees pension payments will not be re-computed prior to age 65 to offset reduced Social Security benefits.

5) The new pension plan shall provide for compulsory retirement of eligible employees at age 65 after June 27, 1964. During the period June 28, 1962 to June 27, 1964 those terms of the current pension plan with respect to the Company's right to retire an eligible employee at age 65 and an eligible employee's right to retire at age 65 shall remain in effect.

6) The new Pension Agreement shall remain in effect for five (5) years from June 28, 1962, at which time it will be automatically extended to the expiration date of the then current Labor Agreement.

7) It is understood and agreed that the above outlined provisions as agreed to shall be incorporated in the Pension Agreement and with specific language amending the Pension Agreement so as to accomplish all amendments necessary.

The Pension Agreement as amended, is subject to approval of the Board of Directors of the Company and of the Commissioner of Internal Revenue before it becomes effective.

All other provisions of the Pension Agreement shall remain in effect except as amended in accordance with the above.

Signed this 29th day of July, 1962.

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA

## MEMORANDUM AGREEMENT

The Company agrees to provide a reduced Hospitalization and Surgical plan for employees retiring after June 27, 1962, for which employees will pay the full amount of premium. For employees who elect to continue this reduced coverage, the Company will make a contribution of $2.00 per month (to each such employee) which amount shall be applicable only toward the cost of the Hospitalization and Surgical plan. The initial cost of this Hospitalization plan will be $11.41 per month for the Pensioner and his spouse.

In addition, all employees who retire after June 27, 1962, will receive $2,000 Life Insurance coverage at no cost to the employee.

Signed this 29th day of July 1962.

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA

**General Counsel Exhibit No. 3**

(excerpts)

# AGREEMENT

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION
AND
LOCAL UNION NO. 1
ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA

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JULY 29, 1962

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BARBERTON, OHIO

## ARTICLE I.—PURPOSE

Section 1. It is the intent and purpose of the parties hereto, that this agreement shall promote and improve industrial and economic relations, will establish a basis for securing cooperation and goodwill between the Company, the Union and the employees, and to set forth herein, the basic agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed by the Pittsburgh Plate Glass Company, Chemical Division Plant at Barberton, Ohio, covered by this Agreement.

Section 2. In consideration of the obligations assumed by the Company in this Agreement, the Union is in accord with the objective of achieving in this plant maximum productivity per employee during the term of this Agreement in order that the Company may receive a fair day's work for a fair day's pay as provided for in this Agreement.

Section 3. It is mutually understood that the terms and conditions relating to the employment of workers covered by this Agreement have been decided upon by collective bargaining.

Section 4. During the life of this Agreement the Company will not enter into any contract with any employee or group of employees, or with any other employees' organization in the Pittsburgh Plate Glass Company, Chemical Division Plant at Barberton, Ohio, which would supersede the provisions of this Agreement.

Section 5. The Company and the Union shall comply with the hours of labor and rates of pay and other conditions of employment prescribed by this Agreement.

Section 6. The Company shall not reclassify employees or duties or occupations performed nor engage in any activity for the purpose of defeating or evading the provisions of this Agreement.

ARTICLE II.—RECOGNITION

Section 1. The Company recognizes the Union as the exclusive representative of all the employees in the Pittsburgh Plate Glass Company, Chemical Division Plant at Barberton, Ohio, working on hourly rates of pay, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other working conditions of employment.

Section 2. It is understood that all hourly employees in the position of group leaders or temporary hourly foremen as distinguished from supervisors are to come under the provisions of the contract, however, hourly group leaders or temporary hourly foremen shall not be permitted to administer the grievance procedure of the Labor Agreement.

Section 3. The term "regular employee" as used in this Agreement shall not include any salaried employee or any

employee who has not passed his plant probation period of forty (40) actual working days, except as otherwise provided herein.

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## Article XXXI.

### Insurance Benefits

Section 1. Effective September 1, 1962, the Company agrees to provide a policy or policies of group hospitalization and surgical benefits insurance including medical and major-medical coverage for employees and their family dependents who are eligible for and elect such coverage and, a program of Group Life Insurance for eligible male employees. An employee insured under this Section 1 shall contribute toward the monthly premium cost for such insurance $2.72 for single coverage and $5.67 for dependent coverage.

Section 2. The Company agrees to provide without cost to the employee the following:

> On or after July 1st, 1962 a group health and accident insurance program which provides sixty dollars ($60) a week for a maximum of twenty-six (26) weeks.

Section 3. An employee becomes eligible for group insurance six (6) calendar months following the date of employment providing that he has not been discharged or has not voluntarily left the employ of the Company during that six (6) months' period. The employee must, however, be actively employed and at work at the expiration date of said six (6) calendar months. If he is not at work and actively employed on that day, he will become eligible on the day at which he returns to work.

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## Article XXXV.

### Termination of Agreement

Section 1. The foregoing constitutes a complete Agreement on all questions of wages, hours, and working conditions between the Company and the Union. This Agreement shall become effective June 28, 1962, except as otherwise provided herein, and shall remain in full force and effect until midnight June 27, 1964, and from year to year thereafter unless either party desires to modify or terminate the Agreement, and files a notice in writing of its desire to terminate or modify at least sixty (60) days prior to Midnight June 27, 1964, or prior to Midnight June 27, of any subsequent year.

This Agreement is signed at Barberton, Ohio, this 29th day of July, 1962.

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

(Signed)

W. S. Straub
W. R. Harris
J. M. Rodgers
W. D. Koblenzer
W. P. Lawrence

LOCAL UNION NO. 1
ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA

(Signed)

Donald Walker
Wm. E. Williams
Alder Cikra
Richard D. Lowry
Roy C. Barnes

**General Counsel Exhibit No. 4**

# PENSION AGREEMENT

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION
AND
LOCAL UNION NO. 1
ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA

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JULY 20, 1950
AMENDED JUNE 28, 1955
AMENDED JANUARY 1, 1960
AMENDED JUNE 28, 1962

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BARBERTON, OHIO

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The underscoring in the pages which follow indicate changes in the Pension Agreement as a result of 1962 negotiations.

## PENSION AGREEMENT

Agreement between Pittsburgh Plate Glass Company, Chemical Division, Barberton, Ohio (referred to herein as the "Company"), and Allied Chemical and Alkali Workers of America Local No. 1 (referred to herein as the "Union"), amending the Pension Agreement between the parties dated July 20, 1950, as amended, (referred to herein as the "Pension Agreement").

The parties agree as follows:

Effective June 28, 1962, the Pension Agreement is amended to read in its entirety as follows:

Wherever used herein

(a) The term "existing labor agreement" means the labor agreement between the Company and the Union dated July 29, 1962.

(b) The term "Employee" means any employee of the Company at its Barberton plant who from time to time during the term of this Pension Agreement shall be in the bargaining unit covered by the existing labor agreement (hereinafter called "the bargaining unit") and who shall not have ceased to be an employee under the provisions of such labor agreement and shall include an employee whose continuous service, as defined in this Pension Agreement, as of the effective date of pension benefits as provided in paragraph B of PART II of this Pension Agreement, shall not have been broken within the meaning of Section 3 of PART I of this Pension Agreement.

(c) The term "pensioner" means a person who is retired under the terms of this Pension Agreement and who receives or is entitled to receive pension benefits described in PART I.

## PART I

## PENSION BENEFITS

### Section 1—Eligibility

A. 1. Any Employee:

(i) who retires on or after June 28, 1962 and who on the date of his retirement (1) is actively employed (that is, on the current payroll) at the time of retirement within the bargaining unit, (2) has at least ten (10) years' continuous service, and (3) has attained the 65th anniversary of his birth, or

(ii) who retired on or after January 1, 1960 and prior to June 28, 1962, and who on the date of his retirement (1) was actively employed (that is, on the current payroll) at the time of retirement within the bargaining unit, (2) had at least ten (10) years' continuous service, and (3) had attained the 65th anniversary of his birth, or

(iii) who retired on or after June 28, 1950 and prior to January 1, 1960, and who was (1) actively employed (that is, on the current payroll) at the time of retirement within the bargaining unit, (2) had at least fifteen (15) years' continuous service, and (3) had attained the 65th anniversary of his birth, shall be eligible to receive a Normal Retirement Pension as provided in this Pension Agreement, unless such Employee has at any time received pension or relief benefits of any character under the Company's Voluntary Pension, Retirement Allowance and Relief Practices. For the purpose of determining eligibility for a Normal Retirement Pension, an Employee otherwise eligible hereunder who is absent due to shutdown, physical disability, official layoff, or official leave of absence shall, during the first five (5) years of such absence, be eligible to retire upon pension under this paragraph A-1 without returning to active employment in the bargaining unit, provided he shall not have ceased to be an Employee during said five (5) years pursuant to the practices and procedures under the existing labor agreement, or under any applicable future labor agreement then in effect, and provided further that such Employee's continuous service has not been broken as provided in subsections A and B of Section 3 of this PART I.

2. At any time prior to June 28, 1964, the Company shall have the right in its sole discretion to retire an eligible Employee upon pension on or after the 65th anniversary of his birth and an eligible Employee may retire on pension on or after the 65th anniversary of his birth without the consent of the Company. On and after June 28, 1964, retirement upon a pension of an eligible Employee who has attained the 65th anniversary of his birth shall be mandatory.

B. Any Employee:

(i) who on or after June 28, 1962 shall have attained the 60th anniversary of his birth and shall have had at least fifteen (15) years' continuous service or shall have had at least twenty (20) years' continuous service even though he has not attained the 60th anniversary of his birth and who through some unavoidable cause occurring thereafter and subsequent to June 27, 1962; or

(ii) who on or after January 1, 1960 but not later than June 27, 1964 shall have at least fifteen (15) years' continuous service prior to age 65 even though he had not attained age 60 and who through some unavoidable cause occurring thereafter and subsequent to January 1, 1960; or

(iii) who after June 27, 1950 and prior to January 1, 1960 shall have attained the 60th anniversary of his birth and shall have had at least fifteen (15) years' continuous service or shall have had at least twenty (20) years' continuous service even though he has not attained the 60th anniversary of his birth and who through some unavoidable cause occurring thereafter and subsequent to June 27, 1950,

shall have become totally and permanently disabled while in active employment (that is, on the current payroll) within the bargaining unit or within the first thirty (30) days of any layoff or leave of absence, shall be entitled to a Disability Pension upon his retirement as provided in this Pension Agreement.

(1) An Employee shall be deemed to be totally and permanently disabled (as the term "totally and permanently disabled" is used herein) and shall be retired only (a) if he has been totally and permanently disabled by bodily injury or disease so as to be prevented thereby from engaging in any substantially

gainful occupation or employment and (b) after such total and permanent disability shall have continued for a period of six (6) consecutive months and, in the opinion of a qualified physician selected by the Company, it will be total, permanent and continuous during the remainder of his life. Disability shall be deemed to have resulted from an unavoidable cause unless it (a) was contracted, suffered or incurred while the Employee was engaged in, or resulted from his having engaged in, a felonious criminal enterprise, or (b) resulted from his habitual drunkenness or addiction to narcotics, or (c) resulted from a self-inflicted injury. Total and permanent disability resulting from any of such enumerated causes, or from future service in the armed forces which prevents him from returning to employment with the Company and for which he receives a military pension, shall not entitle an Employee to a pension under this paragraph. Any pension for total and permanent disability under this Agreement shall continue only so long as such pensioner shall be totally and permanently disabled. The totality and permanency of disability may be verified by medical examination prior to age 65 at any reasonable time and from time to time.

(2) As a condition of an Employee's right to receive a Disability Pension under this agreement, he shall make proper application for Disability Benefits under the Federal Social Security Act.

C. The Company shall have the right to retire on a Disability Pension any Employee who meets the age and length of continuous service requirement set forth in paragraph B of this Section 1 and who, in the Company's opinion, is physically or mentally incapable of continuing employment. Such Employee shall, as a condition of his right to receive a Disability Pension, make proper application for Disability Benefits under the Federal Social Security Act.

D. Any Employee who on or after January 1, 1960 has attained the 60th but not the 65th anniversary of his birth and has fifteen (15) or more years of continuous service may be retired by mutual agreement between the Company and the Union, and subject to the conditions stated herein, shall be eligible to receive an Early Retirement-Mutual Pension. Such Employee, as a condition of receiving an Early Retirement-Mutual Pension, shall make proper application for Disability Benefits under the Federal Social Security Act when, and if, such Employee becomes totally and permanently disabled.

E. Any Employee who on or after June 28, 1962 has attained the 62nd but not the 65th anniversary of his birth and who has fifteen (15) or more years of continuous service may be retired at the sole option of the Company and, subject to the conditions stated herein, shall be eligible to receive an Early Retirement-Company Option Pension. Such Employee, as a condition of receiving an Early Retirement-Company Option Pension shall make proper application for Disability Benefits under the Federal Social Security Act when, and if, such Employee becomes totally and permanently disabled.

F. Any Employee who retires on or after January 1, 1960 and who on the date of his retirement (1) was actively employed (that is, on the current payroll) at the time of retirement within the bargaining unit, (2) has at least fifteen (15) years' continuous service and (3) has attained the 60th but not the 65th anniversary of his birth, shall be eligible to receive an Early Retirement Pension.

G. An Employee who is actively employed (that is, on the current payroll) on or after January 1, 1960 and whose employment is terminted on or after January 1, 1960, and after he has attained the 40th anniversary of his birth, and who at the time of such termination has fifteen (15) or more years of continuous service credited under the Pension Agreement, shall be eligible upon application to receive a

deferred vested Normal Retirement Pension, provided that at that time such application is made he has attained the 65th anniversary of his birth, is not employed by the Company and is not eligible for or receiving any other type of retirement or disability benefit from the Company or under this Pension Agreement.

H. Each application for a pension shall be in writing on a form provided by the Board refered to in Section 4 of this PART I and shall be made to such Board or to such representative as may be designated bmy it for the purpose. The Board may require any applicant for a pension to furnish to it such information as may reasonably be required.

Section 2—Amount of Pensions

A. Subject to the provisions of paragraphs B, C, D, E, F, G, and H of this Section 2—

(1) The amount of the Normal Retirement Pension payable under paragraph A-1(i) or paragraph 2 of Section 1 of this PART I shall be $2.50 per month multiplied by the number of years of continuous service credited prior to June 28, 1962 plus $2.80 per month multiplied by the number of years of continuous service credited on or after June 28, 1962.

(2) The amount of the Normal Retirement Pension payable under paragraph A-1(ii) of Section 1 of this PART I shall be $2.25 per month multiplied by the number of years of continuous service credited prior to January 1, 1960 plus $2.50 per month multiplied by the number of years of continuous service credited on or after January 1, 1960.

(3) The amount of the Normal Retirement Pension payable under paragraph A-1(iii) of Section 1 of this PART I shall be $2.20 per month multiplied by the number of years of continuous service credited up to and including a maximum of thirty (30).

(4) The amount of the Disability Pension payable to an Employee who retires on or after June 28, 1962 under paragraph B(i) or paragraph C of Section 1 of this PART I shall be $5.00 per month multiplied by the number of years of continuous service credited prior to June 28, 1962 plus $5.60 per month multiplied by the number of years of continuous service credited after June 27, 1962; provided, however, that in any month for which a retired Employee is eligible for either disability or old age benefits payable under the Federal Social Security Act, his monthly Disability Pension prior to age 65 and his Normal Retirement Pension when he attains age 65 will be computed in accordance with the formula in clause A(1) of this Section 2.

(5) The amount of the Disability Pension payable to an Employee who retires on or after January 1, 1960 under paragraph B(ii) of paragraph C of Section 1 of this PART I shall be $4.50 per month multiplied by the number of years of continuous service credited prior to January 1, 1960 plus $5.00 per month multiplied by the number of years of continuous service credited on or after January 1, 1960; provided, however, that in any month for which a retired Employee is eligible for either disability or old age benefits payable under the Federal Social Security Act, his monthly Disability Pension prior to age 65 and his Normal Retirement Pension when he attains age 65 will be computed in accordance with the formula in clause A(2) of this Section 2.

(6) (a) The amount of the Disability Pension payable to an Employee who retired prior to January 1, 1960 under paragraph B(iii) or paragraph C of Section 1 of this PART I shall be $88.00 per month, provided, however, that such disability pensioner who when he attains the 65th anniversary of his birth, is receiving a Disability Pension under said

paragraph B(iii) (or is eligible for such a Disability Pension in all respects except that he is eligible to receive Federal Old Age Insurance Benefits) shall thereupon, in lieu of any Disability Pension under this Agreement, be entitled to a pension computed under clause A(3) of this Section 2.

(b) One-Half of any disability payment in the nature of a pension under any Federal or State law, including the Federal Social Security Act as the same may be amended from time to time, shall be charged against the amount of any Disability Pension payable under clause (6) (a) of Section 2-A of this PART I for the period corresponding to the period to which such other amount or payment is applicable but not beyond age 65.

(7) The amount of the Deferred Vested Normal Retirement Pension payable under paragraph G of Section 1 of this PART I shall be computed in Clause A(1) of this Section 2.

(8) The amount of the Eearly Retirement-Mutual Pension payable under paragraph D of Section 1 of this PART I shall be $4.50 per month multipled by the number of years of continuous service credited prior to January 1, 1960 plus $5.00 per month multipled by the number of years of continuous service credited after December 31, 1959; provided, however, that in any month for which a retired Employee is eligible for either disability or old age benefits payable under the Federal Social Security Act, his monthly Early Retirement-Mutual Pension prior to age 65 and his Normal Retirement Pension when he attains age 65 will be computed in accordance with the formula in Clause A(1) of this Section 2.

(9) The amount of the Early Retirement-Company Option Pension payable under paragraph E of Section 1 of this PART I shall be $5.00 per month multiplied

by the number of years of continuous service credited prior to June 28, 1962 plus $5.60 per month multiplied by the number of years of continuous service credited on or after June 28, 1962; provided, however, that for any month after such retired Employee attains age 65 or attains the qualifying age for an unreduced benefit by reason of age under the Federal Social Security Act or becomes eligible for a disability pension benefit under such Act, whichever occurs first, his monthly retirement benefit payable thereafter shall be recomputed as a Normal Retirement Pension in accordance with Section 2-A (1) above.

(10) Any Employee entitled to benefits under paragraphs B, C, D, or E of Section 1 of this PART I will receive the entire amount of such pension until such time as he receives payment for disability under the Federal Social Security Act at which time the Company shall withhold all subsequent pension payments until such time as the Company has recovered the full amount of the difference between the pension paid under paragraphs B, C, D, or E and the redetermined amount of the applicable Normal Retirement Pension for the period corresponding to the period to which the Federal Social Security Act disability payments were applicable.

(11) The amount of the Early Retirement Pension payable under paragraph F of Section 1 of this PART I shall be computed in accordance with the formula in clause A(1) of this Section 2 based on his years of continuous service at the time of his retirement, reduced by 6/10 of 1% for each complete calendar month by which such Employee is under the age of 65 at the time of his retirement.

B. Each pension shall be paid in monthly installments. The first monthly installment of any pension due shall be payable during the month next following the month in which

an Employee shall retire, provided that application for pension is made not later than the close of the month following retirement; otherwise the pension shall commence with the first day of any subsequent calendar month in which application for pension is made, and the last monthly installment of such pension shall be payable for the month in which the death of such pensioner shall occur.

C. If any pensioner is or shall become, or upon application would become, entitled to any other pension or payment in the nature of a pension, other than primary insurance benefits under the Social Security Act, from any source or fund to which source or fund the Company shall have contributed (any such other pension or payment in the nature of pension being hereinafter referred to as Other Pension), then the amount of the pension payable to such pensioner under this Pension Agreement for any period shall be reduced by the amount of any Such Other Pension paid or payable to him or that would upon application become payable to him during the time any pension is payable under this Pension Agreement; provided, however, that, if such pensioner shall have contributed to the source or fund out of which such Other Pension shall be paid or become payable or would become payable upon application, then the amount by which the pension payable pursuant to this Pension Agreement for any period shall be reduced in accordance with the foregoing provisions of this paragraph C shall be decreased by the amount of that part of such Other Pension during the time any pension is payable under this Agreement which shall be attributable to the contributions which such person shall have made to such source or fund.

D. If any pensioner is or shall become entitled to or shall be paid any discharge, liquidation or dismissal or severance allowance or payment of similar kind to which the Company shall have contributed, or by reason of any present or futur elaw, as the same may be amended from time to time, of the United States of America or of any foreign

country, or of any state, district, territory or subdivision of, or subject to the jurisdiction of any of the foregoing, then the total amount paid or payable to him in respect of any such allowance or payment shall be deducted from the amount of any pension for the period corresponding to the period which such allowance or payment is applicable, to which such pensioner would be entitled under this Pension Agreement; provided, however, that if such pensioner shall have contributed to the source or fund out of which such allowance or payment shall be paid or become payable, then the amount which shall be deducted from or charged against the amount of any such pension in accordance with the foregoing provisions of this paragraph D shall be decreased by the amount of that part of such allowance or payment which shall be attributable to the contributions which such pensioner shall have made to such source or fund.

It is further understood that monthly payments for total and permanent disability, under group life policies, will not be deducted from a pension payable under this Pension Agreement, but, if an Employee who receives such payments later recovers and is able to return to work, such group life insurance policies will not be reinstated.

E. Any amount paid to or on behalf of any Employee or pensioner on account of injury or occupational disease causing disability in the nature of a permanent disability for which the Company is liable, whether pursuant to Workmen's Compensation or occupational disease laws, or arising otherwise from the statutory or common law (except fixed statutory payments for the loss of any bodily member) and any such payments on account of employment by an employer other than the Company, and any disability payment in the nature of a pension under any federal or state law, other than the Federal Social Security Act as the same may be amended from time to time, and other than a pension granted for or on account of military service, shall be deducted from or charged against the amount of

any pension payable under this PART I for the period corresponding to the period to which such other amount or payment is applicable; provided, however, that (except where the Employee has elected to receive a lump sum payment in lieu of periodic payments) deductions for all such amounts or payments shall be made only with respect to the period they are actually paid to such Employee. A lump sum payment elected in lieu of periodic payments shall be deducted from the amount of pension benefits for periods and in amounts equivalent to the periods and amounts for which such lump sum payment is a substitute.

F. In lieu of the Normal Retirement Pension payable under the provisions of clause (1) of paragraph A of this Section 2, an Employee who will become eligible for a Normal Retirement Pension (and who has never received a Disability Pension) may elect at any time and from time to time prior to the 64th anniversary of his birth to receive upon retirement, a reduced pension during his own life time and during the remaining life time of one surviving person named by him as a contingent annuitant, payable in an amount determined under Option 1 or Option 2 below, provided written notice of his election of a reduced pension and designation of the contingent annuitant is filed with the Pension Board at least one year before such Employee attains age 65; provided, however, that Employees who will have attained age 64 prior to June 1, 1960 may exercise the foregoing election at any time prior to June 1, 1960 or within three months after the approvals provided for in Paragraph B of PART II of this Agreement have been obtained, whichever is later.

Election of such reduced pension and designation of a contingent annuitant may not be revoked during the year preceding the 65th anniversary of such Employee's birth, nor thereafter, except that if the designated contingent annuitant dies during such year, the election will be automatically revoked and such Employee shall then have the right within one month of such death but prior to the 65th

anniversary of his birth, to again file with the Pension Board a written notice of his election of a reduced pension and designation of a contingent annuitant.

If a designated contingent annuitant dies subsequent to the 65th anniversary of the Employee's birth and prior to the first day of the first month with respect to which such Employee's pension is payable, the Employee's election to receive a reduced pension shall be automatically revoked and he shall have no further right to name a contingent annuitant. If the Employee dies prior to the first day of the first month with respect to which such Employee's pension is payable, the contingent annuitant shall have no right to any pension payments.

The Company agrees to give each Employee notice at least six months prior to the 64th anniversary of his birth of his right to elect such reduced pension.

Option 1—A reduced pension payable during the pensioner's life and after his death payable in the same amount during the life of, and to, the contingent annuitant.

The reduced pension shall be in an amount determined by multiplying the pension computed under the provisions of clause (1) of paragraph A of this Section 2 by a factor of .70 if the Employee's age and the contingent annuitant's age are the same (age of each determined as being the attained age at his or her last birthday prior to the date of the Employee's retirement). Such factor shall be increased by .01 for each year that the contingent annuitant's age thus determined exceeds the Employee's age (but the factor used shall never exceed unity) and shall be decreased by .01 for each year that the contingent annuitant's age thus determined is less than the Employee's age.

Option 2—A reduced pension payable during the pensioner's life, and after his death payable at one-half of rate of the reduced pension during the life of, and to, the contingent annuitant.

The reduced pension shall be in an amount determined by multiplying the pension computed under the provisions of clause (1) of paragraph A of this Section 2 by a factor of .85 if the Employee's age and the contingent annuitant's age are the same (age of each determined as being the attained age at his or her last birthday prior to the date of the Employee's retirement). Such factor shall be increased .01 for each year that the contingent annuitant's age thus determined exceeds the Employee's age (but the factor used shall never exceed unity) and shall be decreased by .01 for each year that the contingent annuitant's age thus determined is less than the Employee's age.

Section 3—Determination of Continuous Service

A. The term "continuous service" as used in this PART I, with respect to the period prior to June 28, 1950, means years and months of plant seniority established in accordance with the procedures and practices under the existing labor agreement.

B. The term "continuous service" as used in this PART I, with respect to the period beginning on June 28, 1950, and thereafter, means service in the bargining unit as set forth in the existing labor agreement prior to retirement calculated from the Employee's last hiring date in the bargaining unit or June 28, 1950, if his last hiring date was prior to June 28, 1950, (this means in the case of a break in continuous service after June 27, 1950, continuous service shall be calculated from the date of reemployment in the bargaining unit following the last break in continuous service) in accordance with the following provisions:

(1) Continuous service in any calendar year shall be credited at the rate of 1/12 of a year for every full

140 hours (and subsequent to June 30, 1955 for every full 135 hours) actually worked as an Employee in the bargaining unit during such calendar year, provided, however, that an Employee may not receive continuous service credit of more than six months in the period June 28 to December 31, 1950, nor of more than twelve months in any succeeding calendar year. Except as provided in paragraphs C, G, H, I and J of this Section 3 of this PART I, no continuous service shall be credited for any period not actually worked as an Employee in the bargaining unit.

(2) Continuous service shall be broken in the event that an Employee ceases to be an Employee pursuant to the practices and procedures under the existing labor agreement or under any applicable future labor agreement in effect at such time. Any Employee who fails to return to work at such time or times as required pursuant to the practices and procedures under the existing labor agreement, or under any such applicable future labor agreement in effect at such date, shall thereupon cease to be an Employee.

C. Where an Employee, other than a temporary Employee, enters the military service of the United States, is discharged or relieved from active service under conditions other than dishonorable, and returns to active employment within ninety (90) days after such discharge or relief, such absence shall not constitute a break in continuous service, but for the purpose of computing the amount of his pension, only the period of service rendered in time of war or pursuant to a national conscription law plus not to exceed ninety (90) days shall be considered, and years of continuous service shall be credited at the rate of 1/12 of a year for each full calendar month of such period of service. For the purposes of this paragraph, the term "military service" shall be construed to include service in the merchant marine of the United States.

D. Continuous service shall not include service of employees in the employ of any company whose stocks or properties may be acquired hereafter by the Company or service of employees in other plants of the Company.

E. Continuous service and all breaks in continuous service within the meaning of this PART I shall be determined from the payroll records, personnel records, operating records, and other records of the Company. In any case continuous service and breaks in continuous service, all within the meaning of this PART I shall be determined from such sources of information, by such statistical calculations as may be reasonably adequate for the purpose, and/or in any manner by which the closest possible approximation of continuous service and breaks in continuous service may be made. Nothwithstanding the foregoing, for the period prior to June 28, 1950, continuous service within the meaning of this PART I shall be conclusively determined by records of plant seniority established in accordance with the procedures and practices under the existing labor agreement to the extent that seniority has been so established.

F. Beginning with the year 1951 the Company shall, not later than April 1 of each year, give to each Employee and to the Union a statement of the Employee's continuous service from the commencement thereof to the end of the preceding calendar year or from the date of the last previous statement to the end of the preceding calendar year, as the case may be. The record of continuous service shown on each such statement shall be final and binding upon the Employee, the Union and the Company with respect to his continuous service unless the Union shall by notice in writing to the Company delivered within thirty (30) days after April 1 in the year in which such statement is delivered, dissent from the record of continuous service shown by such statement. The record of continuous service statement shall advise the Employee of this thirty (30) day limitation. In case of such dissent and

in case the Company and the Union cannot agree upon the length of continuous service, either the Company or the Union may submit the question to arbitration under Section 5 of this PART I within sixty days following the Union's notice of dissent; otherwise, said statement of continuous service shall be final and binding as aforesaid. A final and binding statement of continuous service, as above provided, shall not be later questioned even though such statement be incorporated in a subsequent statement of further continuous service.

G. An Employee who is absent from work for periods during which he is engaged in Union business with Company representatives shall receive continuous service credit equal to the number of working hours so lost. An Employee shall be considered as being engaged in Union business with Company representatives when preparing for or engaging in joint Union-Management Labor Relations Committee meetings, contract negotiations, consideration of Company proposals, or arbitration proceedings, even though Company representatives are not actually present.

H. The following provisions with respect to continuous service shall be applicable to one Employee selected to serve as a full-time Union Representative and who devotes his full time to the duties of such position.

(1) Service of such an Employee selected as the full-time Union Representative shall not give him any continuous service credit under this Pension Agreement if he is not on a leave of absence to fill such position granted by the Company, pursuant to the practices and procedures under the existing labor agreement or any applicable future labor agreement.

(2) Years of continuous service shall be credited to such Employee at the rate of 1/12 of a year for each calendar month of service in such office under such a leave of absence from the Company.

(3) If any such Employee ceases to hold such posion and devote his full time thereto without reporting for work within the bargaining unit within thirty days after ceasing to hold such position or to devote his full time thereto, his continuous service under this Pension Agreement shall thereby be broken. If at the time such Employee ceases to hold such position he is delayed from returning to active employment due to sickness or accident, such thirty-day limit will be extended until he is able to return to work.

(4) Any such Employee who at the date of his retirement under the said Pension Agreement holds the office of full-time Union Representative under a Company-granted leave of absence from the bargaining unit shall be deemed to be employed within the bargaining unit within the meaning of paragraph A of Section 1 of PART I of this Pension Agreement.

(5) The pension payable under this Pension Agreement to any such Employee shall be computed as provided in this PART I reduced by the subtractions specified in Section 2 of this PART I, and there shall also be subtracted from such pension payable any pension or other payments which such Employee may receive from the Union applicable to the corresponding period during which a pension is payable to him under this Pension Agreement.

(6) An Employee shall not receive continuous service credit under the provisions of this paragraph H and also under paragraph A or paragraph B of this Section 3 for the same period of time.

(7) Continuous service under this paragraph H shall be credited to not more than one Employee for the same period of time.

I. An Employee who, either before, on, or after June 28, 1950, serves as an hourly supervisor or in a salaried position

in the plant and who returns to the bargaining unit and retires therefrom shall receive continuous service credit at the rate of 1/12 of a year for each full calendar month of service as such a supervisor or in such a salaried position, for which he does not receive continuous service credit pursuant to paragraph A or B of this Section 3, provided that a pension payable to such Employee under paragraph A of Section 1 of this PART I shall be reduced by the amount of old age retirement benefits payable to such Employee which are attributable to contributions made by the Company.

J. An Employee who, subsequent to June 28, 1955 is absent from his work because of jury duty for which he receives compensation under the then current labor agreement between the parties, or because of injury or disease sustained in the course of employment with the Company and for which he receives Workmen's Compensation or occupational disease benefits, shall be credited, for the purpose of computing his continuous service under the provisions of clause (1) of paragraph B of this Section 3, at the rate of 40 hours per week for the period he would otherwise have been scheduled to work for the Company during such absence.

K. The Company shall have the right in its sole discretion to determine that any Employee who has been retired for disability has recovered from such disability and to reemploy such Employee. In the event of such reemployment the Disability Pension of such Employee shall cease, and such Employee shall be credited with his continuous service as at the date of his prior retirement for disability plus continuous service from the date of such reemployment calculated in accordance with paragraph B of Section 3 of this PART I, for the purpose of calculating any subsequent pension benefits to which he may become entitled.

L. If a pensioner under paragraph A of Section 1 of this PART I is reemployed by the Company, his pension shall cease. Upon subsequent retirement he shall be credited with

the continuous service which he had at the date of his previous retirement plus any continuous service accumulated since the date of his reemployment.

### Section 4—Administration

The administration of the pension benefits shall be in charge of a Board (herein referred to as the "Board"), which shall consist of such members from management, and shall have such authority and perform such duties, as may be determined from time to time by the Company.

### Section 5—Appeals Procedure

A. If any difference shall arise between the Company or the Board and any Employee who shall be an applicant for a pension as to:

(1) the number of years of continuous service of such applicant; or

(2) the age of such applicant; or

(3) whether an applicant for a pension on the ground of total and permanent disability under paragraph B of Section 1 of this PART I shall have become disabled by reason of unavoidable cause as defined in said paragraph B; or

(4) whether a totally and permanently disabled Employee under paragraph B of Section 1 of this PART I is engaging in any substantially gainful occupation or employment; or

(5) whether an Employee is physically or mentally incapable of continuing employment, within the meaning of paragraph C of Section 1 of the PART I;

and agreement cannot be reached between the Company or the Board and a representative of the Union, either the

Company or the Union may refer such question for final and binding decision to an Arbitrator to be selected as follows:

The Company and the Union, promptly after execution of this Pension Agreement, shall endeavor to agree upon a panel of three arbitrators. If, at the end of twenty (20) days after such execution, they have not agreed upon the panel of three arbitrators, they shall request the American Arbitration Association and the Federal Mediation and Conciliation Service each to submit to the parties a list of five qualified arbitrators. The names received from these two agencies shall be added to the list of names agreed to by the parties, if any. Prompty thereafter, the Company and the Union shall strike names from the list in the following manner: The Company and the Union shall determine by lot the order in which they will strike names, and thereafter each shall in that order alternately eliminate one name until only three names remain on the list, and those three shall thereupon constitute the Arbitration Panel during the period of this Pension Agreement or any extension thereof.

The party desiring to refer the question to arbitration shall transmit a notice to the opposite party, by registered mail, return receipt requested, within ten (10) days after the Company has given the Union its final answer in writing with respect to such question. Within five (5) days after receipt of such notice by the opposite party the two parties shall meet to select the Arbitrator. Each party shall strike one name in secret from separate copies of the Panel list of three and if, after comparison of the two lists by the parties, more than one name remains unstruck, the Arbitrator shall be chosen by lot from those remaining names.

Each party may appoint a representative who shall be entitled to sit with the Arbitrator during the hearing and during the consideration of the decision; but those representatives shall not vote on the decision.

The Arbitrator shall render a decision in writing and shall deliver a copy or copies to each party within twenty-

five (25) days from the date of his appointment, unless the parties agree to extend this time.

The Arbitrator shall not change or modify this Pension Agreement, or have any authority in the making of a new agreement. His authority shall be limited to the question referred to in clauses (1), (2), (3), (4), and (5) of this paragraph A of this Section 5.

Either party who appoints a representative shall pay his fees and expenses. The fees and expenses of the Arbitrator and all the costs of the hearing shall be divided equally between the parties.

B. If any difference shall arise between the Company and any Employee as to whether such Employee is or continues to be totally and permanently disabled within the meaning of paragraph B of Section 1 of the PART I, such differences shall be resolved as follows:

The Employee shall be examined by a physician appointed for the purpose by the Company and by a physician appointed for the purpose by a duly authorized representative of the Union. If they shall disagree concerning whether the Employee is or continues to be totally and permanently disabled, that question shall be submitted to a third physician selected by such two physicians. The medical opinion of the third physician, after examination of the Employee and consultation with the other two physicians, shall decide such question. The fees and expenses of the third physician shall be shared equally by the Company and the Union.

## Section 6—Payment of Pension Benefits

The Company shall be free from time to time during the term of this Pension Agreement to determine or vary the manner and means of making provision for paying the pension benefits set forth in Part I of this Pension Agreement. While the Company shall be free from time to time during the term of this Pension Agreement to create such reserve

or reserves, trust or trusts, or to purchase such annuity or annuities with respect to the whole or any part of this Pension Agreement as the Company may elect, there shall be no obligation so to do.

Section 7—Miscellaneous

A. No pension properly payable to a pensioner pursuant to this PART I shall be discontinued or reduced except as provided in paragraph 7 of Section 2 of this PART I, in paragraphs H, I, K, and L of Section 3 of this PART I, and in paragraph F of this Section 7.

B. No Employee prior to his retirement under conditions of eligibility for pension benefits shall have any right or interest in or to any portion of any funds which the Company may have heretofore provided, or may hereafter elect to provide, for the purpose of paying pensions and no Employee or pensioner shall have any right to pension benefits except to the extent provided in this PART I. The Company's rights to discipline or discharge, subject to the existing labor agreement, shall not be affected by reason of the provisions of the preceding sentence or any other provision contained in this Pension Agreement.

C. No Employee who at any time shall have received retirement or relief benefits under the Company's Voluntary Pension, Retirement and Relief Practices shall be eligible to receive any pension benefits under this Pension Agreement. The Company's Voluntary Pension, Retirement and Relief Practices, including practices with respect to periodic review of eligibility for relief payments, will continue for Employees receiving benefits under such practices prior to June 28, 1950. On and after June 28, 1950, no other Employee shall receive any pension or other similar benefit from the Company except in accordance with the terms of this Pension Agreement.

D. The Company shall not be required to do any act by virtue of any of the provisions of this Pension Agreement

that is or hereafter may be prohibited by any law, including the laws of the State of incorporation of the Company.

E. Within one year after July 20, 1950 each Employee employed within the bargaining unit as of that date, and after said date each Employee hired or transferred into the bargaining unit at his hiring or transfer date, must submit to the Personnel Office of the Plant where the Employee is employed evidence satisfactory to the Board as to his correct age. If any Employee fails to submit evidence satisfactory to the Board within such time limit, the Company may refer the question of the correct age of such Employee to final and binding arbitration pursuant to paragraph A of Section 5 of this PART I.

F. Each pensioner shall be responsible for furnishing the Company with the address to which he wishes his pension checks mailed. If any pension check mailed to the last such address appearing on the Company's records is returned because the addressee is not at this address, and if pensioner does not contact the Company or a period of five (5) years thereafter, he shall forfeit all claims to pension benefits or payments beginning with the first such payment which was returned to the Company.

G. The Company shall furnish annually to the Union and the Employees a report regarding pension benefits paid as provided in PART I of this Pension Agreement.

## PART II

## GENERAL PROVISIONS

A. So long as the provisions of PART I of this Pension Agreement shall continue in effect, without modification or change:

(1) neither the Union nor any of the officers or representatives of the Union nor any Employee shall make any request that the pension benefits or any provisions of this Pension Agreement be changed in any respect or

terminated or that new pension or similar benefits be established or that the amount which the Company is required by the provisions of PART I of this Pension Agreement to pay or cause to be paid or provided for pension benefits for the Employees be increased; nor

(2) shall the Union or any of the officers or representatives of the Union or any Employee engage in or in any manner assist or encourage any strike, sitdown slowdown or work stoppage for the purpose of securing any such increase or any change or other action with respect to pensions; and during the term of this Pension Agreement the Company shall not have any obligation to negotiate or bargain with the Union with respect to any of the matters covered by or relating to clause (1) or (2) of this paragraph A of PART II. If any Employee or group of Employees represented by the Union should violate the intent of clause (1) or (2) of this paragraph A of PART II, the Union through its proper officers will promptly notify the Company and such Employee or Employees, in writing, of its disapproval of such violation; nor

(3) shall the Company engage in any lockout during the term of this Pension Agreement because of a dispute with respect to any matter in this Pension Agreement; provided, however, that nothing in this paragraph A shall prohibit the Union from striking if the Company shall violate clause (3) of this paragraph A or the Company from engaging in a lockout if the Union shall violate clause (2) of this paragraph A.

B. This Amended Pension Agreement shall become effective as of June 28, 1962 and shall remain in effect without modification or change until Midnight, June 27, 1967 upon which date it shall automatically terminate, unless there is then in effect a current labor agreement in which case this agreement shall be extended to expire at the same time as the labor agreement, or unless the Company and the Union

agree to the contrary; provided, however, that this Pension Agreement is contingent upon and subject to obtaining such approvals of the Board of Directors and the shareholders of the Company, as the Company in its sole discretion shall consider necessary and it is also contingent upon and subject to obtaining and retaining approvals of the Commissioner of Internal Revenue of the deductibility for income tax purposes of any and all payments made or to be made by the Company hereunder, and of the manner and means of making provisions for paying the pension benefits as being tax exempt under the provisions of Section 401 or other applicable provisions of the Internal Revenue Code or as such Code may from time to time be amended. The Company will exert its best efforts to obtain promptly the approvals referred to above.

This Amended Pension Agreement executed this 29th day of July, 1962 at Akron, Ohio.

ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA, LOCAL No. 1

Donald Walker

William E. Williams

Richard D. Lowry

Alder Cikra

Roy C. Barnes

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

W. S. Straub

W. R. Harris

J. M. Rodgers

W. D. Koblenzer

**General Counsel Exhibit No. 5**

PENSIONERS:

Effective November 1, 1964, for those employees who retired after June 27, 1962, and who elect to continue their program of Hospitalization and Surgical Insurance, the Company will increase its current contribution Two Dollars ($2.00), which total amount of Four Dollars ($4.00) shall be applicable only toward the cost of the program of Hospitalization and Surgical Insurance.

If Medicare or a program of Government type insurance is adopted this additional Two Dollars ($2.00) would no longer be applicable.

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**General Counsel Exhibit No. 6**

(Excerpts)

AGREEMENT

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION
AND
LOCAL UNION No. 1
ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA

OCTOBER 20, 1964

BARBERTON, OHIO

* * * * * * * * * * *

ARTICLE 1.—PURPOSE

Section 1. It is the intent and purpose of the parties hereto, that this agreement shall promote and improve industrial and economic relations, will establish a basis for securing cooperation and goodwill between the Company, the Union and the employees, and to set forth herein, the basic agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed by the Pittsburgh Plate Glass Company, Chemical Division Plant at Barberton, Ohio, covered by this Agreement.

Section 2. In consideration of the obligations assumed by the Company in this Agreement, the Union is in accord with the objective of achieving in this plant maximum productivity per employee during the term of this Agreement in order that the Company may receive a fair day's work for a fair day's pay as provided for in this Agreement.

Section 3. It is mutually understood that the terms and conditions relating to the employment of workers covered by this Agreement have been decided upon by collective bargaining.

Section 4. During the life of this Agreement the Company will not enter into any contract with any employee or group of employees, or with any other employees' organization in the Pittsburgh Plate Glass Company, Chemical Division Plant at Barberton, Ohio, which would supersede the provisions of this Agreement.

Section 5. The Company and the Union shall comply with the hours of labor and rates of pay and other conditions of employment prescribed by this Agreement.

Section 6. The Company shall not reclassify employees or duties or occupations performed nor engage in any activity for the purpose of defeating or evading the provisions of this Agreement.

## Article II.—Recognition

Section 1. The Company recognizes the Union as the exclusive representative of all the employees in the Pittsburgh Plate Glass Company, Chemical Division Plant at Barberton, Ohio, working on hourly rates of pay, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other working conditions of employment.

Section 2. It is understood that all hourly employees in the position of group leaders or temporary hourly foremen as distinguished from supervisors are to come under the provisions of the contract, however, hourly group leaders or temporary hourly foremen shall not be permitted to ad-

minister the grievance procedure of the Labor Agreement, issue warnings or invoke discipline against an employee; however, this will in no way affect the right of the temporary hourly foremen or group leaders to direct the work force.

Section 3. The term "regular employee" as used in this Agreement shall not include any salaried employee or any employee who has not passed his plant probation period of forty (40) actual working days, except as otherwise provided herein.

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ARTICLE XXXI.

INSURANCE BENEFITS

Section 1. Effective November 1, 1964, the Company agrees to provide a policy or policies of group hospitalization and surgical benefits insurance including medical and major-medical coverage for employees and their family dependents who are eligible for and elect such coverage and, a program of Group Life Insurance for eligible male employees. The Insurance Benefits furnished under this Section 1 will be at no cost to active employees for single or dependent coverage.

Section 2. The Company agrees to provide without cost to the employee the following:

> On or after November 1, 1964, a group health and accident insurance program which provides sixty-five ($65) a week for a maximum of twenty-six (26) weeks.

Section 3. An employee becomes eligible for group insurance six (6) calendar months following the date of employment providing that he has not been discharged or has not voluntarily left the employ of the Company during that six (6) months' period. The employee must, however, be actively employed and at work at the expiration date of said six (6) calendar months. If he is not at work and actively employed on that day, he will become eligible on the day at which he returns to work.

• • • • • • • • • • •

## Article XXXV.

### Termination of Agreement

Section 1. The foregoing constitutes a complete Agreement on all questions of wages, hours, and working conditions between the Company and the Union. This agreement shall become effective October 20, 1964 except as otherwise provided herein, and shall remain in full force and effect until midnight October 19, 1967, and from year to year thereafter unless either party desires to modify or terminate the Agreement, and files a notice in writing of its desire to terminate or modify at least sixty (60) days prior to Midnight October 19, 1967, or prior to Midnight October 19, of any subsequent year.

This Agreement is signed at Barberton, Ohio, this 20th day of October, 1964.

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION
(Signed)

W. R. Harris
J. M. Rodgers
L. J. Rimlinger
M. W. Jones
W. D. Koblenzer
W. P. Lawrence

LOCAL UNION NO. 1
ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA
(Signed)

William E. Williams
Alder Cikra
Richard D. Lowry
Donald Walker
James Campbell

**General Counsel Exhibit No. 7**

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

PPG chemicals — Barberton, Ohio

J. M. Rodgers
Director of Industrial Relations — March 24, 1966

Mr. W. E. Williams, Vice President
Allied Chemical & Alkali Workers of America
Local Union No. 1
959-961 Wooster Road West
Barberton, Ohio

Dear Bill:

As you requested, the following is an explanation of the application of the Non-Duplication of Benefits provision applicable to the Pensioners' Hospitalization-Medical program of insurance.

Benefits payable under such circumstances shall be paid so as to provide for possible full payment of allowable expenses on a claim for a retired employee or his covered dependent with concurrent coverage under another group plan, but shall not exceed the total of such allowable expenses.

Also, we have attached copies of the letters we have mailed to our pensioners, which are self-explanatory, and which we advised you we would furnish as a matter of information.

Yours very truly,

JOHN
J. M. Rodgers

JMR-chw

IDENTIFICATION OF LETTERS—

No. 1—To retirees who do not have Insurance coverage.

No. 2—Retirees carrying a plan of Insurance to which the Company makes no contribution.

No. 3—Retirees carrying a plan of Insurance to which the Company makes a contribution.

No. 4—Retirees under age 65 carrying a plan of Insurance to which the Company makes no contribution.

No. 5—Retirees under age 65 carrying a plan of Insurance to which the Company makes a contribution.

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#1

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

PPG chemicals

Barberton, Ohio

W. R. Harris
Works Manager

March 24, 1966

Dear Pensioner:

The matter of your Hospital-Medical Insurance is of the utmost importance to you; therefore, we recommend that you read this letter carefully.

The program of Hospital and Medical benefits under the Federal Social Security Act, known as Medicare will become effective on July 1, 1966. Any person who has attained age 65, whether they ever worked and were covered by Social Security or not will be eligible to receive benefits under this program.

Hospital Benefits under Medicare will be received automatically by any person 65 years of age or over; no enrollment or payment of premiums is required. However, Medical Benefits are voluntary and do require enrollment and the payment of a premium of $3.00 a month per person.

Enrollment for Medical Benefits must be completed by March 31, 1966, otherwise, enrollment will be delayed to a future date and benefits will be lost.

As a Pensioner of the Pittsburgh Plate Glass Company, you have not been enrolled in any program of Hospitalization-Medical Insurance furnished by the Company.

We are pleased to inform you that, effective in July 1966, the Pittsburgh Plate Glass Company will make a contribution to you of three dollars ($3.00) a month toward the cost of your Social Security Hospital-Medical program of Insurance.

Yours very truly,

W. R. HARRIS
W. R. Harris

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#2

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

PPG chemicals — Barberton, Ohio

W. R. Harris
Works Manager — March 24, 1966

Dear Pensioner:

The matter of your Hospital-Medical Insurance is of the utmost importance to you; therefore, we recommend that you read this letter carefully.

The program of Hospital and Medical benefits under the Federal Social Security Act, known as Medicare will become effective on July 1, 1966. Any person who has attained age 65, whether they ever worked and were covered by Social Security or not will be eligible to receive benefits under this program.

Hospital Benefits under Medicare will be received automatically by any person 65 years of age or over; no enrollment or payment of premiums is required. However, Medical Benefits are voluntary and do require enrollment and the payment of a premium of $3.00 a month per person. Enrollment for Medical Benefits must be completed by March 31, 1966, otherwise, enrollment will be delayed to a future date and benefits will be lost.

You are urged to enroll for the Medical Benefits available to you if you have not already done so, and if you have any questions concerning the program, contact your nearest Social Security office, but do so before the initial deadline of March 31, 1966.

As a pensioner of the Pittsburgh Plate Glass Company, a program of Hospitalization-Medical Insurance has been made available to you, as furnished by the Equitable Life Assurance Society.

Your participation in this program of Insurance for either single coverage or for coverage for you and your spouse has been a voluntary election on your part, and enrollment has been conditioned on your timely payment of the full monthly premium for the type coverage you elected to carry.

Should you elect to continue your present coverage after the Social Security Hospital-Medical plan becomes effective in July 1966, the same benefits as outlined in the Certificate of Insurance will continue. We must remind you, however, in considering continuance of your present program of Hospitalization and Medical Insurance that, with respect to this plan there will be no duplication of benefits that are also paid for under the Medicare program.

The Company would like also to inform you that should you elect to voluntarily discontinue your enrollment in the present Hospitalization-Medical Program of Insurance, effective July 1966, when the Social Security Hospital-

Medical program goes into effect, or in a subsequent month, thereafter your current monthly premiums would no longer be deducted from your pension check and the full amount will be available to you.

Further, in the event you do elect to discontinue your present enrollment, the Company will then make a contribution of three dollars ($3.00) per month to you, which amount would cover the current individual cost to you for your Social Security enrollment.

In the event you elect to discontinue your present enrollment, but your spouse is under age 65, and not yet eligible for the Social Security Hospital-Medical program you may elect to continue her in the present program of Insurance as currently furnished by the Equitable Life Assurance Society, until she reaches age 65 or becomes eligible for the Social Security Hospital-Medical Program. In order to enroll her in this manner you must notify the Company and timely pay the full cost of the premium for single coverage for your spouse. The initial cost of this coverage will be $5.71 per month effective July 1, 1966.

If you have any questions concerning this matter, you may contact Mr. Frank Ruehling in the Insurance Department at the Barberton Plant.

Yours very truly,

W. R. Harris
W. R. Harris

# 3

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

PPG chemicals

W. R. Harris
Works Manager

Barberton, Ohio

March 24, 1966

Dear Pensioner:

The matter of your Hospital-Medical Insurance is of the utmost importance to you; therefore, we recommend that you read this letter carefully.

The program of Hospital and Medical benefits under the Federal Social Security Act, known as Medicare will become effective on July 1, 1966. Any person who has attained age 65, whether they ever worked and were covered by Social Security or not will be eligible to receive benefits under this program.

Hospital Benefits under Medicare will be received automatically by any person 65 years of age or over; no enrollment or payment of premiums is required. However, Medical Benefits are voluntary and do require enrollment and the payment of a premium of $3.00 a month per person. Enrollment for Medical Benefits must be completed by March 31, 1966, otherwise, enrollment will be delayed to a future date and benefits will be lost.

You are urged to enroll for the Medical Benefits available to you if you have not already done so, and if you have any questions concerning the program, contact your nearest Social Security office, but do so before the initial deadline of March 31, 1966.

As a pensioner of the Pittsburgh Plate Glass Company, a program of Hospitalization-Medical Insurance has been made available to you, as furnished by the Equitable Life Assurance Society.

Your participation in this program of Insurance for either single coverage or for coverage for you and your spouse has been a voluntary election on your part, and enrollment has been conditioned on your timely payment of the full monthly premiums for the type coverage you elected to carry.

It is necessary to inform you at this time, that in your case, the program of Insurance provides that the current Company monthly contribution of $4.00 will be reduced to a $2.00 monthly contribution when the Social Security-Medicare benefits become available in July 1966. This is in accordance with prior arrangements on this matter.

Should you elect to continue your present coverage after the Social Security Hospital-Medical plan becomes effective in July 1966, the same benefits as outlined in the Certificate of Insurance will continue. We must remind you, however, in considering continuance of your present program of Hospitalization and Medical Insurance that, with respect to this plan there will be no duplication of benefits that are also paid for under the Medicare program.

The Company would like also to inform you that should you elect to voluntarily discontinue your enrollment in the present Hospitalization-Medical Program of Insurance, effective July 1966, when the Social Security Hospital-Medical program goes into effect, or in a subsequent month, thereafter your current monthly premiums would no longer be deducted from your pension check and the full amount will be available to you.

Further, in the event you do elect to discontinue your present enrollment, the Company will then make a contribution of three dollars ($3.00) per month to you, which amount would cover the current individual cost to you for your Social Security enrollment.

In the event you elect to discontinue your present enrollment, but your spouse is under age 65, and not yet eligible

for the Social Security Hospital-Medical program you may elect to continue her in the present program of Insurance as currently furnished by the Equitable Life Assurance Society until she reaches age 65 or becomes eligible for the Social Security Hospital-Medical Program. In order to enroll her in this manner you must notify the Company and timely pay the full cost of the premium for single coverage for your spouse. The initial cost of this coverage will be $5.71 per month effective July 1, 1966.

If you have any questions concerning this matter, you may contact Mr. Frank Ruehling in the Insurance Department at the Barberton Plant.

Yours very truly,

W. R. HARRIS
W. R. Harris

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# 4

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

PPG Chemicals
W. R. Harris
Works Manager

Barberton, Ohio

March 24, 1966

Dear Pensioner:

The matter of your Hospital-Medical Insurance is of the utmost importance to you; therefore, we recommend that you read this letter carefully.

The program of Hospital and Medical benefits under the Federal Social Security Act, known as Medicare will become effective on July 1, 1966. Any person who has attained age 65, whether they ever worked and were covered by Social Security or not will be eligible to receive benefits under this program.

Hospital Benefits under Medicare will be received automatically by any person 65 years of age or over; no enrollment or payment of premiums is required. However, Medical Benefits are voluntary and do require enrollment and the payment of a premium of $3.00 a month per person. Enrollment for Medical Benefits must be completed by March 31, 1966, otherwise, enrollment will be delayed to a future date and benefits will be lost.

You are urged to enroll for the Medical benefits available to you as soon as you become eligible since at present you are under 65 years of age. If you have any questions concerning the program, contact your nearest Social Security office when appropriate to do so.

As a pensioner who at present is under age 65, you have been enrolled in a program of Hospitalization-Medical Insurance, as furnished by the Equitable Life Assurance Society, your participation in this program of Insurance for either single coverage or for coverage for you and your spouse has been a voluntary election on your part, and enrollment has been conditioned on your timely payment of the full monthly premium for the type coverage you elected to carry.

Should you elect to continue your present coverage after you become age 65 and are eligible for the Social Security Hospital-Medical program, the same benefits as outlined in the certificate of Insurance will continue. We must remind you, however, in considering continuance of your present program of Hospitalization and Medical Insurance that, with respect to this plan there will be no duplication of benefits that are also paid for under the Medicare program.

The Company would like also to inform you that upon reaching age 65, should you elect to voluntarily discontinue your enrollment in the present Hospitalization Medical program of insurance then your monthly premiums would no longer be deducted from your pension check, and the full

amount will be available to you following your withdrawal from the plan.

In the event you do elect to discontinue your present enrollment, after you reach age 65, the Company will then make a contribution of three dollars ($3.00) per month to you, which amount would cover the current individual cost to you for your Social Security enrollment.

If after you reach age 65 and elect to discontinue your present enrollment, but your spouse is under age 65, and not yet eligible for the Social Security Hospital-Medical program you may elect to continue her in the present program of Insurance as currently furnished by the Equitable Life Assurance Society, until she reaches age 65 or becomes eligible for the Social Security Hospital-Medical Program. In order to enroll her in this manner you must notify the Company and timely pay the full cost of the premium for single coverage for your spouse. The initial cost of this coverage will be $5.71 per month effective July 1, 1966.

If you have any questions concerning this matter, you may contact Mr. Frank Ruehling in the Insurance Department at the Barberton Plant.

Yours very truly,

W. R. HARRIS
W. R. Harris

# 5

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION

PPG chemicals — Barberton, Ohio

W. R. Harris
Works Manager — March 24, 1966

Dear Pensioner:

The matter of your Hospital-Medical Insurance is of the utmost importance to you; therefore, we recommend that you read this letter carefully.

The program of Hospital and Medical benefits under the Federal Social Security Act, known as Medicare will become effective on July 1, 1966. Any person who has attained age 65, whether they ever worked and were covered by Social Security or not will be eligible to receive benefits under this program.

Hospital Benefits under Medicare will be received automatically by any person 65 years of age or over; no enrollment or payment of premiums is required. However, Medical Benefits are voluntary and do require enrollment and the payment of a premium of $3.00 a month per person. Enrollment for Medical Benefits must be completed by March 31, 1966, otherwise, enrollment will be delayed to a future date and benefits will be lost.

You are urged to enroll for the Medical benefits available to you as soon as you become eligible since at present you are under 65 years of age. If you have any questions concerning the program, contact your nearest Social Security office when appropriate to do so.

As a pensioner who at present is under age 65, you have been enrolled in a program of Hospitalization-Medical Insurance, as furnished by the Equitable Life Assurance Society, your participation in this program of Insurance for either single coverage or for coverage for you and your spouse has been a voluntary election on your part, and

enrollment has been conditioned on your timely payment of the full monthly premium for the type coverage you elected to carry.

It is necessary to inform you at this time, that in your case, the program of Insurance provides that the current Company monthly contribution of $4.00 will be reduced to a $2.00 monthly contribution when Social Security Hospital-Medical benefits program goes into effect in July 1966. This is in accordance with prior arrangements on this matter. However, this reduction will not take place until the month following the month in which you become age 65 or are eligible for Social Security Hospital-Medical benefits.

Should you elect to continue your present coverage after you become age 65 and are eligible for the Social Security Hospital-Medical Program, the same benefits as outlined in the Certfiicate of Insurance will continue. We must remind you, however, in considering continuance of your present program of Hospitalization and Medical Insurance that, with respect to this plan there will be no duplication of benefits that are also paid for under the Medicare program.

The Company would like also to inform you that upon reaching age 65, should you elect to voluntarily discontinue your enrollment in the present Hospitalization Medical program of insurance then your monthly premiums would no longer be deducted from your pension check, and the full amount will be available to you following your withdrawal from the plan.

In the event you do elect to discontinue your present enrollment, after you reach age 65, the Company will then make a contribution of three dollars ($3.00) per month to you, which amount would cover the current individual cost to you for your Social Security enrollment.

If after you reach age 65 and elect to discontinue your present enrollment, but your spouse is under age 65, and not yet eligible for the Social Security Hospital-Medical program you may elect to continue her in the present pro-

gram of Insurance as currently furnished by the Equitable Life Assurance Society, until she reaches age 65 or becomes eligible for the Social Security Hospital-Medical Program. In order to enroll her in this manner you must notify the Company and timely pay the full cost of the premium for single coverage for your spouse. The initial cost of this coverage will be $5.71 per month effective July 1, 1966.

If you have any questions concerning this matter, you may contact Mr. Frank Ruehling in the Insurance Department at the Barberton Plant.

Yours very truly,

W. R. HARRIS
W. R. Harris

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**General Counsel Exhibit No. 8**

The Pittsburgh Plate Glass Company, Chemical Division, Barberton, Ohio (referred to herein as the "Company") and Local Union No. 1 of the Allied Chemical and Alkali Workers of America (herein after referred to as the "Union") have entered into an Extension Agreement and

1. The current Labor Agreement between the parties dated October 20, 1964 and
2. The Pension Agreement between the parties executed, as amended, July 29, 1962

are hereby extended and shall remain in full force and effect until midnight—October 19, 1970.

1966

Wages: Effective on the date of October 20, 1966 wage rates will be increased as follows:

| | Wages as of 10/20/1966 |
|---|---|
| 4¢ — | $2.76 to $3.00 |
| 5¢ — | $3.01 to $3.23 |
| 6¢ — | $3.24 and above. |

Pension Improvements: Pension benefits effective November 1, 1966 equal to those which became effective in the Lake Charles Agreement on May 16, 1966, for those employees who retire subsequent to the date of this extension agreement.

| Benefit | Now | New |
|---|---|---|
| Normal Benefit | $2.80-$2.50 | $4.25 for those who retire subsequent to this Agreement. |
| Vesting | 15 Years—Age 40 | 10 years service and age 40 or 15 years service regardless of age. |
| Early Reduced Pension | 15 years and age 60 reduced .6 of 1% for each month under age 65. | 10 years and age 60 reduced 5/9 of 1% for each calendar month under age 65 or at least age 55 plus service = 85—same. |
| Total Disability Definition | Prevented from engaging in any substantially gainful employment. | Unable to perform least job in the plant. |
| Total Disability Benefits | 15 years and age 60 or 20 years regardless of age—two times normal benefits reduced to normal at age 65 or when eligible for Social Security benefits. | 15 years service at any age—two times normal benefits reduced to normal at age 65 or when eligible for Social Security benefits. |
| Automatic Survivor Benefits | None | A surviving spouse, upon application, shall automatically be eligible to receive a survivor income benefit upon the death of an employee<br>a) who dies on or after November 1, 1966 and<br>b) on or after attaining age 60 with ten or more years of continuous service, or attaining age 55 if his combined years of age and credited service (to the nearest 1/12 in each case) total 85 or more, before the first day of the month following the date on which he retires, and |

| Benefit | Now | New |
|---|---|---|
| | | c) who, if he had retired at the date of his death, would have been eligible to receive a Normal Retirement Pension or an Early Retirement Pension under this Pension Agreement.<br><br>The term "surviving spouse" shall mean the person who is the employee's spouse at the time of his death and who had been his spouse for at least one year immediately prior to his death. The amount of the automatic survivor pension benefit shall be equal to 55% of<br><br>a) an amount determined by multiplying the monthly pension benefit otherwise payable to the Employee, if he had retired on a Normal or Early Retirement Pension on the date of his death by 90% if the employee's age and that of his spouse are the same. Such percentage (90%) shall be increased by one-half of one percent (½%) (up to a maximum of 100%) for each 12 months that the age of the spouse exceeds the employee's age and shall be decreased by one-half of one percent (½%) for each twelve months that the age of the spouse is less than the employee's age.<br><br>No payment of the automatic survivor pension benefit shall be payable with respect to the first 24 months following the month in which the employee dies.<br><br>The Automatic Survivor Benefit as provided in this Agreement shall not be applicable in any case in which at the time of an employee's death an election of a reduced pension and designation of a contingent annuitant under this agreement shall be valid and effective. |

1967

Wages: Effective October 20, 1967 wage rates will be increased as follows:

| | Wages as of 10/20/1967 |
|---|---|
| 9¢ — | $2.80 to $3.05 |
| 10¢ — | $3.06 to $3.29 |
| 11¢ — | $3.30 and up. |

Vacations:

Effective January 1, 1967 an improved vacation to provide:

Two (2) weeks vacation after one (1) years service.
Three (3) weeks vacation after five (5) years service.
Four (4) weeks vacation after ten (10) years service.
Five (5) weeks vacation after twenty (20) years service.

1968

Wages: Effective on the date of October 20, 1968 wage rates will be increased as follows:

| | Wages as of 10/20/1968 |
|---|---|
| 8¢ — | $2.89 - $3.15 |
| 9¢ — | $3.16 - $3.40 |
| 10¢ — | $3.41 and up. |

Holiday: One additional Holiday (Washington's birthday) making a total of nine (9) paid Holidays during the calendar year 1968 and thereafter.

1969

Wages: Effective on the date of October 20, 1969 wage rates will be increased as follows:

| | Wages as of 10/20/1969 |
|---|---|
| 7¢ — | $2.97 to $3.24 |
| 8¢ — | $3.25 to $3.50 |
| 9¢ — | $3.51 and up. |

Future Pensioners:

Effective with the first of the month following the effective date of this Extension Agreement, the Company will contribute three dollars ($3.00) per month to employees who retire subsequent to the date of this Agreement toward the cost of Medicare if they are not covered under the current Hospitalization Insurance plan for retirees.

All others terms and conditions of the old agreement except as expressly provided for are hereby incorporated into this new Agreement.

Signed this ..... day of .....1966.

| For the Union: | For the Company: |
|---|---|
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |
| ..... | ..... |

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**Company Exhibit No. 1**

MEMORANDUM AGREEMENT

The following has been agreed to between the Company and the Union:

1) All regular full-time employees during the year 1959 who are on the current payroll on the effective date of this Agreement shall receive eight (8) hours pay at their regular straight time hourly rate in lieu of an eighth paid holiday for the year 1959. The hourly rate will include those adjustments due November 1, 1959, under the Labor Agreement.

2) The group life insurance provided for under Article XXXI of the Labor Agreement for active employees shall,

upon retirement, be reduced to two thousand dollars ($2,000) for male employees and to fifteen hundred dollars ($1500) for female employees. Employees who elect to continue such insurance upon retirement, as provided herein, will pay the specified premium for such group life insurance.

3) For employees who retire on or after January 1, 1960, the Company will make available a policy or policies of group hospitalization and surgical benefits insurance for the pensioner and dependent wife for which the pensioner will pay the applicable premium rate, and which will provide a group hospitalization benefit of $14 per day for a maximum of 70 days and 20 times the daily benefit for in-hospital extras, in-hospital medical care benefits of $5 per day for a maximum of 70 days and a group surgical insurance benefit schedule with a maxmium benefit of $200. The initial rate for the above coverage will be eight dollars and eighteen cents ($8.18) per month.

Executed this 6th day of January, 1960.

| | |
|---|---|
| LOCAL UNION No. 1<br>ALLIED CHEMICAL AND ALKALI<br>WORKERS OF AMERICA | COLUMBIA-SOUTHERN<br>CHEMICAL CORPORATION |
| (Signed) | (Signed) |
| /s/ DONALD WALKER | /s/ J. M. RODGERS |

**Company Exhibit No. 2**

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 8-RC-270

In the Matter of

PITTSBURGH PLATE GLASS COMPANY, COLUMBIA CHEMICAL DIVISION, *Employer*

and

ALLIED CHEMICAL AND ALKALI WORKERS OF AMERICA, LOCAL NO. 1, *Petitioner*

## DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Barberton, Ohio, on September 30, 1948, before Charles A. Fleming, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner and the Intervenor are labor organizations which claim to represent certain employees of the Employer.

3. The question concerning representation:

On June 27, 1948, the Intervenor and the Employer entered into a collective bargaining agreement to terminate

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1 Local 13013, District 50, affiliated with the United Mine Workers of America, hereinafter called the Intervenor, was allowed to intervene at the hearing by the hearing officer on the ground of a contract between the Intervenor and the Employer.

on June 27, 1950. On August 7, 1948, the officers of Local 13013 called a special meeting of the local, duly noticed, and a vote was taken to disaffiliate from the Intervenor, surrender the charter and dissolve the local. At the same meeting the members voted to organize Local No. 1, Allied Chemical and Alkali Workers of America, the Petitioner herein, now claiming to be the successor to Local 13013. Of the 1,600 employees at the plant and mine of the Employer approximately 1,100 were dues paying members of the Petitioner at the time of the hearing. The former officers of the Intervenor became the newly elected officers of the Petitioner. The former office of the Intervenor has been taken over by the Petitioner and regular meetings are held. The Intervenor conceded at the hearing that it had no officers or dues paying members at the Employer's plant or mine and that it had no office at Barberton, Ohio, and held no meetings. However, the Intervenor's representative at the hearing stated that Local 13013 was still in existence, and that it had established an office at Akron, Ohio, and was prepared to handle grievances of the Employer's employees. The Petitioner by letter dated August 14, 1948, requested recognition by the Employer as the exclusive bargaining representative of the employees. In a letter dated August 16, 1948, the Employer refused to recognize the Petitioner. The Intervenor contends that its existing contract with the Employer is a bar to the instant petition.

We find no merit in this contention. It is clear on the foregoing facts that there exists a doubt as to the identity of the labor organization that the employees desire to represent them which can best be resolved by an election. Under such circumstances we have held that an existing contract does not constitute a bar to a present determination of representatives.[2]

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[2] See *Matter of Olive & Myers Manufacturing Company*, 59 N.L.R.B. 650; *Matter of Revere Copper & Brass, Incorporated*, 67 N.L.R.B. 1114; *Matter of Carson Pirie Scott & Company*, 69 N.L.R.B. 935; *Matter of Foley Lumber & Export Corporation*, 70 N.L.R.B. 73; *Matter of Riggs Optical Company, Consolidated*, 77 N.L.R.B. 265.

We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. In accordance with the agreement of the parties, we find that all employees of the Employer's plant and limestone mine at Barberton, Ohio, working on hourly rates, including group leaders who work on hourly rates of pay, but excluding salaried employees and supervisors within the meaning of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

## Direction of Election [3]

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Pittsburgh Plate Glass Co., Columbia Chemical Division, Barberton, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty days (30) from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement,

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[3] Having failed to achieve compliance or to initiate steps for compliance with the filing requirements of Section 9 (f), (g), and (h), of the amended Act, the Intervenor will not be accorded a place on the ballot. See *Matter of Cardinal Products, Inc.*, 80 N.L.R.B., No. 23.

to determine whether or not they desire to be represented by Local No. 1, Allied Chemical and Alkali Workers of America, for the purposes of collective bargaining.

Signed at Washington, D. C., this 16th day of December 1948.

PAUL M. HERZOG, *Chairman*
JOHN M. HOUSTON, *Member*
ABE MURDOCK, *Member*
NATIONAL LABOR RELATIONS BOARD

(SEAL)

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**Company Exhibit No. 5**

MEMORANDUM AGREEMENT

The Company agrees to provide a reduced Hospitalization and Surgical plan for employees retiring after June 27, 1962, for which employees will pay the full amount of premium. For employees who elect to continue this reduced coverage, the Company will make a contribution of $2.00 per month (to each such employee) which amount shall be applicable only toward the cost of the Hospitalization and Surgical plan. The initial cost of this Hospitalization plan will be $11.41 per month for the Pensioner and his spouse.

In addition, all employees who retire after June 27, 1962, will receive $2,000 Life Insurance coverage at no cost to the employee.

Signed this 29th day of July 1962.

ALLIED CHEMICAL AND ALKALI
WORKERS OF AMERICA
DONALD WALKER

PITTSBURGH PLATE GLASS COMPANY
CHEMICAL DIVISION
J. M. RODGERS

## EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

BEFORE THE NATIONAL LABOR RELATIONS BOARD
EIGHTH REGION

Case No. 8-CA-4202

In the Matter of:

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION
and
LOCAL UNION NO. 1, ALLIED CHEMICAL AND ALKALI WORKERS OF AMERICA

Court Room No. 5,
Ninth Floor,
Municipal Building,
Akron, Ohio,
Tuesday, January 17, 1967

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

JAMES V. CONSTANTINE, Esq., Trial Examiner.

APPEARANCE:

RICHARD A. DUROSE, Esq., 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, appearing on behalf of the Counsel, for the General Counsel.

MORTIMER RIEMER, Esq., 2217 The Illuminating Building, 55 Public Square, Cleveland, Ohio 44113, appearing on behalf of the Charging Party.

MARK C. CURRAN, Esq., Assistant Counsel for the Pittsburgh Plate Glass Company, One Gateway Center, Pittsburgh, Pennsylvania 15222, appearing on behalf of the Respondent.

* * * * * * * * * *

[3] PROCEEDINGS

• • • • • • • • • • • •

[4] Mr. DuRose: Mark this.

(The documents above-referred to were marked General Counsel's Exhibit No. 1(a) through 1(g) for identification.)

Trial Examiner: Go ahead, Mr. DuRose.

• • • • • • • • • • • •

[5] Trial Examiner: In the absence of an objection, let them be received into evidence.

Will you mark them received, Mr. Reporter?

(The documents above-referred to heretofore marked General Counsel's Exhibit No. 1(a) through 1(g), were received in evidence.)

• • • • • • • • • • • •

**William E. Williams**

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Take that chair there (indicating) and give your name and address to the reporter.

The Witness: William E. Williams, 4424 Roop, R-o-o-p, Avenue, Barberton, Ohio.

Direct Examination

Q. (By Mr. DuRose) Mr. Williams, do you hold any position [6] with the Allied Chemical and Alkali Workers of America, Local No. 1? A. Yes.

Q. What is that position? A. I'm Vice-President and Chairman of the Union's Labor Relations Committee.

Trial Examiner: I don't want to interrupt but let me tell you something that has always been helpful to counsel.

Mr. DuRose: Yes.

Trial Examiner: This goes for all of you.

If you put a witness on and you want to identify him and his position, you don't have to ask him questions, just put the words in his mouth with leading questions. In other words, it is permissible to do so in preliminary matters.

Go ahead.

Q. (By Mr. DuRose) How long has the Union represented the employees at the Barberton plant? A. The Allied Chemical and Alkali Workers has been the representative of the group since January of 1949.

Q. How long have you been an officer of the Union? A. I was an officer in the Union prior to the Allied Chemical and I have been an officer in the Allied Chemical since 1950, with the exception of from August 1957 until March '58 when I was not in office.

Q. You have been in office since 1958 continuously? [7] A. Yes, I have.

Q. How long has this Union bargained for the collective bargaining agreements with the Company? A. Since January of 1949.

Q. And how long has there been a medical insurance plan for employees? A. We had insurance, the first written document or the first time the insurance was written into the contract as such was in 1948. We had a contributory insurance plan prior to 1948, but it was not written in the contract.

Q. Now, when was the first time that retired employees were permitted to participate in medical insurance? A. They began participation when we negotiated our first pension agreement in the summer of 1950.

Q. And what were the circumstances by which retired employees could participate? A. We had a verbal agreement, the Union and the Company, on the insurance benefits for retired employees. This came as a result of the collective bargaining for a new contract and a pension agreement.

Q. And was there any contribution by the Company towards the premium? A. I don't know, the Company said

there was not. Our people were supposedly paying the premium, at least there was a stipulated premium and the retirees paid it.

[8] Q. And how did the retirees go about paying that amount of money? A. Well, I'm not exactly sure how they did it, on the check of the retirees. This was taken from their total pension through their bookkeeping system in the general office, I assume. I think this was the way it was done.

Q. It was withheld from the pension fund? A. Yes.

Q. All right. Now, after that, when if at any time was there a change in the retired employees health insurance plan? A. The next change occurred in 1960. Actually, the discussion on it started in 1959, it was consummated in an agreement in 1960.

In the fall of 1959, we met with the Company's representatives for the purpose of trying to reach an agreement on extending the then current labor agreement and in extending that labor agreement, we arrived at some modifications in the Pension Agreement which included the insurance for the pensioners.

Q. What was the change in the insurance? A. The hospitalization benefits were increased from a ten-dollar plan to a fourteen-dollar plan.

Q. The benefits were increased? A. The benefits were increased, yes.

[9] Q. And after that, after that was there anything put in writing at that time concerning the health insurance for retirees? A. Not in 1960, no.

Q. When was the next time that there was any agreement made between the Company and the Union concerning retired employees health insurance? A. In 1962, again we were meeting with the Company on a labor contract. Our contract was terminating, and we were meeting in regards to a negotiation of a new contract. Our Pension Agreement was a closed agreement, it would have been run until 1965, but in the negotiations for the labor agreement, we agreed to certain modifications in the Pension Agreement.

Q. What were those? What was the agreement, what were the changes? A. Well, we made certain modifications in the allowance per month per year of service and other general matters embodied in the Pension Agreement itself. We made no change in the insurance benefits as such.

We did reach an agreement that the Company would contribute two dollars toward the cost of the premium of anybody who retired on or after June 28th, 1962.

Mr. DuRose: Would you mark this General Counsel's 2, please?

[10] (The document above-referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q. (By Mr. DuRose) Was this agreement put in writing? A. Yes, it was.

Q. Handing you what has been marked for identification as General Counsel's Exhibit 2, I'll ask you if you can identify it, please. A. Yes, I can. This is the agreement that was reached with regards to the pension benefits at that time.

Mr. DuRose: Here's an extra copy (handing paper to counsel for Respondent).

Mr. Curran: This is what?

Mr. DuRose: G. C. 2.

I move that General Counsel's Exhibit 2 be received in the record.

Mr. Curran: No objection.

Mr. Riemer: No objection.

Trial Examiner: All right, it's received in the absence of objections.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 2, was received in evidence.)

Q. (By Mr. DuRose) I note that General Counsel's 2 is dated July 29, 1962. Was there any other agreement between the Company and the Union that was signed on that day? [11] A. Yes, the new labor agreement was signed on

July 29th, to run for a period of two years until June 27th, 1964.

Mr. DuRose: Mark this No. 3.

(The document above-referred to was marked General Counsel's Exhibit No. 3 for identification.)

Q. (By Mr. DuRose) I hand you what has been marked for identification as General Counsel's Exhibit 3 and ask you to please identify that, please. A. Yes, I can.

Q. What is this? A. This is a copy of the labor agreement that was signed on July 29th, 1962.

Mr. DuRose: General Counsel moves that the General Counsel's Exhibit 3 be received in the record.

Mr. Curran: No objection.

Trial Examiner: I can't hear you, Mr. Curran.

Mr. Curran: No objection.

Trial Examiner: Mr. Riemer?

Mr. Riemer: No objection.

Trial Examiner: All right, it will be received in the absence of an objection.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 3, was received in evidence.)

Q. (By Mr. DuRose) Was there anything else signed on that [12] day? A. Yes, a modified Pension Agreement was signed on that day.

Mr. DuRose: G. C. 4, please.

(The document above-referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. DuRose) I'm handing you what has been marked for identification as General Counsel's Exhibit 4 and ask if you can identify this. A. Yes, this is a copy of the Pension Agreement as it was amended and signed on July 29th, 1962.

Q. I notice on the front cover of the Pension Agreement, it says, "Amended June 28, 1962." Can you explain that? A. Yes, the modification to the Pension Agreement was ac-

tually signed at the same time the labor agreement was signed, but it carried back to the expiration date, June 28th.

Q. The Pension Agreement was retroactive to June 28th? A. Yes.

Mr. DuRose: I move now that G. C. Exhibit 4 be received in the record.

Mr. Curran: No objection.

Mr. Riemer: No objection.

Trial Examiner: All right, it will be received.

[13] (The document above-referred to heretofore marked General Counsel's Exhibit No. 4, was received in evidence.)

Q. (By Mr. DuRose) After 1962, did the Company and the Union arrive at any other agreements concerning medical insurance for retirees? A. Yes, we did.

In 1964, during the meetings and negotiations for a new labor agreement, we agreed to a modification on the insurance for pensioners, only to the extent of the agreement of the Company agreeing with us to increase their contributions towards the cost of the premiums of the insurance for pensioners to four dollars or an extra two dollars for those who retired on or after November 1, 1964.

Q. Was there anything on the agreement—was there anything else written into the agreement? A. Yes, the agreement also provided that this two dollars could be reclaimed by the Company in the event that a Medicare program was eventually set up under the Social Security system.

Q. Was this agreement put into writing? A. This agreement was put in writing, yes.

Q. And where was it placed? A. Well, as we concluded negotiations in our final sessions, we had a booklet which carried the modifications to the labor agreement that had been agreed to, certain mutual [14] understandings in connection with the labor agreement, including this item on the Pension Agreement, and it was placed in that booklet along with the other understandings.

Mr. DuRose: Mark this G. C. 5.

(The document above-referred to was marked General Counsel's Exhibit No. 5 for identification.)

Q. (By Mr. DuRose) I'm handing you what has been marked for identification as G. C. No. 5 and I'll ask you if you can identify that, please. A. Yes, this is a copy of the agreement reached at that time.

Q. That you just stated was placed in the booklet? A. It was placed in the booklet, yes.

Mr. DuRose: General Counsel moves that General Counsel's Exhibit No. 5 be admitted into the record.

Mr. Curran: No objection.

Mr. Riemer: No objection.

Trial Examiner: All right, it will be received.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 5, was received in evidence.)

Q. (By Mr. DuRose) You stated that this agreement was reached at approximately the same time that a collective bargaining agreement was reached? A. Yes, we reached an agreement on the collective bargaining agreement for October 20, 1964. This particular [15] agreement on the pension contribution was made effective November 1st because we were about two-thirds of the way through the month at that time and the pensioners' checks had already been received for the month of October.

Mr. DuRose: Mark this G. C. 6.

(The document above-referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q. (By Mr. DuRose) I hand you what has been marked for identification as General Counsel's Exhibit No. 6 and ask if you can identify it, please. A. Yes, this is a copy of the labor agreement that was reached October 20, 1964.

Q. Can you tell what the termination date of this contract is? A. This contract will terminate October 19th, 1967.

Mr. DuRose: General Counsel moves that General Counsel's Exhibit No. 6 be admitted into the record.

Mr. Curran: No objection.

Mr. Riemer: No objection.

Trial Examiner: Very well, it will be received in evidence.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 6, was received in evidence.)

Q. (By Mr. DuRose) After that contract was signed, did the Union and the Company have any further discussions concerning [16] medical insurance? A. Yes, we did.

In 1965, in the tail end of summer and the early part of fall, we were in a series of meetings with the Company in Akron concerning grievances, application of the contract, and so on. At the tail end of these discussions on November 23rd, as we were winding up the discussions, we asked the Company to sit down with the Union and work out a program of insurance that would give our pensioners coverage on the benefits not covered by the Medicare program.

When we asked the question, the Company indicated that this was a general office matter, that they would take the question under advisement and give us an answer at an appropriate time.

Q. Do you recall who it was who made that statement? A. Yes, Mr. Rodgers, the Company's Industrial Relations Director.

Q. His first name is John? A. John, yes, sir.

Q. After this, was there any further discussion concerning the health insurance for pensioners at that time? A. No, not at that time.

We heard nothing from the question that we had asked the Company, during the balance of 1965. Sometime prior to the week—well, sometime prior to March 21st, I was in a [17] conversation——

Trial Examiner: What year is this?

The Witness: 1966, sir.

Trial Examiner: All right.

A. (continuing) I was in a conversation with the Company's Labor Relations supervisor, a Mr. David Redle, and during the course of several subjects that he and I had discussed, I referred to the fact that—we were actually discussing the length of time that it was taking us to get some answers to some questions that we've had raised, and I made reference to the fact to him that we raised the question to the Company the previous November regarding the Company's sitting down and discussing a program of in-

surance for the retirees to give benefits not covered by the Medicare.

He advised me he knew nothing about this situation, was not familiar with it, but that he would pass it on to the proper people, and I told him I wasn't raising it at that time for it to be passed on to anybody. I was merely using it as a reference point.

Q. Let me ask you a question:

Backing for a minute, at the time of your November 23rd discussion, had Medicare been passed by Congress? A. Yes.

Trial Examiner: I'm a little confused. Now, he's gotten to, I think, this November 23rd discussion.

[18] Mr. Curran: Yes.

Mr. Riemer: '65.

Trial Examiner: I thought you were going into '66?

Mr. DuRose: No, I was backing up.

Trial Examiner: I wish you would remember to mention the year you're talking about, it's easier on me.

All right, go ahead.

Q. (By Mr. DuRose) After you talked to Mr. Redle in March 1966, did you have any further discussions with anyone from the Company concerning this problem? A. Yes, on the morning of March 21st, I received a call from Mr. John Rodgers, the Industrial Relations Director, in which he advised me that my comments to Mr. Redle had been passed on to him and that he had passed them on to the Plant Manager, Mr. William Harris.

He said that Mr. Harris had asked him to call, that he would like to have him meeting with the Union's committee at 3:00 o'clock that afternoon if it was agreeable with the Union.

I told him I was agreeable and we did meet at 3:00 o'clock.

Q. Where did you meet? A. We met in the Company's conference room adjacent or right across the hall from the Plant Manager Mr. Harris's office.

[19] Q. Who was there representing the Union? A. Other than myself, there was the president of the Union, Mr. Blouir——

Q. Spell that last name, please. A. Mr. Blouir, B-l-o-u-i-r. (continuing)—Mr. Lowry, a committeeman, L-o-w-r-y; Mr. Campbell, a committeeman; and Mr. Rudd, R-u-d-d, a committeeman.

Q. Who was there representing the Company? A. Mr. Harris, the Plant Manager, and Mr. Rodgers, the Industrial Relations Director.

Q. That's William Harris? A. Yes.

Q. How long did this meeting last? A. The meeting was scheduled to begin at 3:00 and it terminated roughly at 4:00 o'clock. I think it was about three or four minutes to 4:00 but approximately 4:00 o'clock.

Q. Can you tell us then what happened at the meeting at 3:00 o'clock? A. Well, when the meeting finally began, Mr. Harris was the first one to speak and he told us he had some things he would like to pass on to us of a general nature for the Union's information and he cited six or seven different things that he felt would be of some interest for the Union to know.

[20] One had to do with the deduction of withholding tax. The Company was setting up its machinery to make the deductions on changes that had been made. He wanted to let us know that there might be some confusion because of these deductions until the Company finally got the bugs worked out of the machinery to make the deductions——

Trial Examiner: I think it would be better if you got right to the meat of the thing——

Mr. DuRose: All right.

Trial Examiner: —unless these other matters are also important.

I don't mean to tell you how to try your case. As I read this Complaint, it's the insurance program which is at issue. Why don't you ask him what discussions they have had, if any, on that, rather than have him give us the entire discussion?

Mr. DuRose: All right.

Q. (By Mr. DuRose) What was said at the meeeting concerning medical insurance and who said it? A. Well, after

Mr. Harris got done making the statements of a general nature, he said the Company had an answer to the Union's question of the previous November regarding the insurance for pensioners and that Mr. Rogers would give us the Company's position on this.

Mr. Rodgers started off by telling us that under the [21] agreement reached in 1964 on the extra two-dollar contribution, that the Company had a right to reclaim this two dollars in the event the Medicare program was effected or enacted. It had been enacted and the Company intended to reclaim that two dollars from each person that was receiving it, beginning July 1st, 1966.

He went on to tell us that with regard to working out an insurance program for the retirees, the Company intended to cancel out the insurance for all retirees.

He said because of the enactment of Medicare, the insurance would be practically of no value or practically useless or at least reduced to a point where it would be almost useless. He stated that our program of insurance for pensioners carried a front end deductible, I believe, and also the insurance of the pensioner would not apply where benefits were paid under another group plan and they considered the enactment of Medicare another insurance program under group planning and where Medicare paid, our insurance would not pay.

We, of course, objected to this. First of all, we objected to the taking away of the two dollars.

Mr. Curran: I object unless the witness says who said what at that time at that meeting. When he says, "He said," I don't know who he is talking about.

Trial Examiner: Very well, I'll sustain the objection.

[22] Q. (By Mr. DuRose) Who spoke for the Union and what did they say concerning this? A. I spoke for the Union.

I am the man that made the statement, I told him that we didn't exactly agree with the Company on the removal of the two-dollar contribution.

We agreed it was a matter of contract, that the Company had a perfect right contractually to take the two dollars

away, but it was just such a small item and covered such a few people that we thought it was a pretty small situation, but in any event we did agree that the Company had a right as a matter of contract.

I told him that our Union could not agree that he had the right to cancel the insurance for the pensioners. We felt, or I felt, speaking for the Union, that this was an agreed program that had been arrived at during the course of negotiations in 1964. We didn't feel that the Company had a right to make unilateral changes without bargaining with the Union on the situation.

We raised—I raised another question. I wanted to know what he was going to do with respect to people who were not 65 years old and who would not be eligible for Medicare benefits and, further, what was their intention with regard to the benefits of pensioners who were not qualified for or eligible for Medicare benefits.

[23] As I recall it, at that time the two people representing the Company took a short caucus, came back into the room, and stated they would have to work out a program to cover those people who were not eligible for Medicare benefits as well as the wives of the pensioners who were not eligible for the Medicare benefits.

Q. Who, do you recall who made that statement? A. Mr. Rodgers was doing the speaking for the Company.

Q. All right. A. We went on with the general discussion of the Company's position on the insurance, the pensioners' insurance situation.

Finally, I asked them if their main point was the fact that they intended to cancel out the pensioner insurance and during the course of this discussion, Mr. Rodgers stated that not only were they going to cancel out of the insurance but that it was their intent to contribute or give each pensioner a sum of three dollars and this three dollars would be applied toward the medical benefits under the Medicare program.

We went on with the discussion. I finally asked him if his main point was that it was the Company's intent to terminate the insurance for pensioners. He said that it was.

I told him we wouldn't agree with, this, we didn't think [24] it was right. We thought it was a bargainable issue, we thought we had a right to bargain on it. If he insisted on following or maintaining his position, we would have to take the courses open to us under our rights under the law.

Q. Did he make any reply to that? A. Nothing that I can recall. He may have said something, I don't know. I can't recall any particular remark.

Q. Was there anything else said about any other union in this meeting? A. Yes, during the course of the general discussion on the subject, I stated to the Company that it was certainly a funny thing to me that the Company at Barberton would not bargain for people who were already on pension whereas in the Glass Division of the same Company, they had just recently concluded bargaining for people who were already retired, and to this remark Mr. Rodgers told me that that's a different division under a different management.

Q. Was there anything else said at that meeting that you can recall? A. Yes. I believe Mr. Rodgers did tell our committee that the insurance for the pensions had always been optional and, further, told us that we had no right to bargain for people who were already retired, and I personally disagreed with him on this, this latter part of it. I didn't agree with the optional insurance thing, I didn't disagree——

[25] Q. Was there anything else said that you can recall? A. No.

Q. After that meeting, did you have any further discussions with the Company concerning medical insurance for retirees? A. Yes, on March the 23rd in the afternoon, I received a phone call from the Plant Manager, Mr. William Harris.

Q. And what was said? This was March, 1966? A. March 23rd, 1966.

Q. This was two days after the meeting? A. This was two days after the meeting on March 21st, 1966.

Q. What was said in this phone conversation? A. Well, Mr. Harris called. He started out by telling me that the Company had re-evaluated its position on the pensioners insurance question.

He said that rather than cancel out the insurance in its entirety, the Company was not going to disturb the insurance. They were going to leave it intact as it was.

He said, however, the Company was going to offer each group of pensioners an option to cancel their insurance and for those pensioners who chose to cancel their insurance, there would be a three-dollar contribution by the Company given to those pensioners to be used toward the premium cost of the medical benefits under Medicare.

Q. Did he say how he was going to communicate this with the [26] retired employees? A. Yes, he said it was the Company's intent to mail to each segment of pensioners—and this segment comes about because of the period of time they retired—he said they were going to mail a letter to each segment of the pensioners advising them of the Company's position. I believe he stated that there would be six different letters, either five or six different letters altogether.

He said the Company would be mailing those out to the pensioners. I believe he used the term "Within the next day or so." I asked him if it was his intent to send a copy of these communications to the Union. He said he hadn't thought about it, but if the Union wanted a copy, he would be happy to send the Union a copy and he did send us a copy.

Q. Okay. In the phone conversation, did you make any statements to Mr. Harris? A. When he had completed his statement as to the Company's re-evaluation and their intent at this time, I told him we still couldn't accept the Company's position on it but that our position basically was the same we had stated on Monday, March 21, 1966.

We felt that it was a bargainable issue and the Company should be bargaining with us on this question, and he advised me that we had the Company's position on that.

Q. You stated that you asked Mr. Harris to send you copies [27] of the letters and that he did so? A. Yes, he did so.

Q. When did you receive those letters? A. I believe we got those the following day on March 24th, 1966.

Mr. DuRose: Mark this G. C. 7.

(The document above-referred to was marked General Counsel's Exhibit No. 7 for identification.)

Q. (By Mr. DuRose) I hand you what has been marked for identification as General Counsel's Exhibit 7 and ask you if you can identify it, please. A. Yes, these are copies of the letters that Mr. Harris sent down to our Union office.

Q. Can you tell us what the letter on the first page is? A. Well, immediately behind the letter, he has a page which——

Q. No, could you tell us what the first page is? A. Well, the first page is a letter from John Rodgers to myself in which he explains the fact that he's sending down these communications——

Q. Okay.

Mr. DuRose: General Counsel moves that General Counsel's Exhibit No. 7 be introduced into the record.

Mr. Riemer: No objection.

Mr. Curran: No objection.

Trial Examiner: All right, it is received in the absence [28] of an objection.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 7, was received in evidence.)

Trial Examiner: My notes on the documents don't show whether General Counsel's Exhibit 6 was received. I don't have any indication here and I'd like to know, please, has it been received?

I must not be on the ball. Has that been received, Mr. Reporter?

The Reporter: That has been received. I have a check mark here indicating that it's been received.

Trial Examiner: I'll mark it received.

Mr. DuRose: Can we go off the record?

Trial Examiner: All right. Let's take a short recess.

(Recess had.)

Trial Examiner: Back on the record.

I usually give the reporter a rest once in a while, they are the hardest working people in the building or, at least, in the room.

Are you ready to go forward?

Mr. DuRose: At this time the General Counsel offers the stipulation that the letters which were attached to the General Counsel's Exhibit No. 7 are identical to the letters that were sent by the Company to the pensioners.

[29] Mr. Curran: I will so stipulate, it being understood that there are different letters there. Each one is somewhat different and is being sent to a different pensioner, depending on what benefits they were entitled to at that time.

Trial Examiner: That's what the witness testified to, yes?

Mr. Curran: Yes.

Trial Examiner: That explains why they're different. I glanced at them——

Mr. Curran: With that understanding, I will so stipulate.

Trial Examiner: —it's obvious.

Mr. Riemer, will you join in the stipulation?

Mr. Riemer: Oh, yes.

Trial Examiner: Thank you. The stipulation will be accepted and become part of the record.

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[30] Mr. DuRose: Let the record show that on the duplicate exhibit of General Counsel's Exhibit No. 7, I have substituted copies of these letters which were supplied to me by Mr. Curran, rather than my own duplicated ones.

Trial Examiner: So it's complete now?

Mr. DuRose: It's complete.

[31] Trial Examiner: Very well.

Q. (By Mr. DuRose) After March 23rd, 1966, were there any further discussions between the Union and the Com-

pany concerning medical insurance for retirees? A. Well, yes, in October of 1966. Prior to October of 1966, we again had a series of meetings with the Company in Akron, Ohio over application of the contract, grievances, and matters of this type.

At the conclusion of these discussions, there was a conversation between both parties relative to whether or not the Union would be interested in looking at a proposal to extend the labor agreement. Myself, speaking for the Union, I told the Company we were always willing to look at a proposal of this type and were willing at that time to look at one.

On October the 11th, 1966, the Company gave us a proposal to extend the labor agreement, the current agreement, from October 20th, 1967 to October 19th, 1970. Among the things that the Company offered in its proposal was certain modifications to the Pension Agreement and among those modifications was a stipulation on the insurance for pensioners in which they re-established their previous position of a contribution of three dollars for those people dropping the insurance.

This proposal was not acceptable to the Union. The [32] Company reproposed this on October 20th in which they had offered certain additional benefits in addition to their offer of October 11th, but the proposal on pensioners insurance was exactly the same. We had no effective discussion.

There may have been a question or two, I'm not sure, but we had no effective discussion on this insurance question.

Mr. DuRose: Mark this No. 8.

(The document above-referred to was marked General Counsel's Exhibit No. 8 for identification.)

Q. (By Mr. DuRose) I'm handing you what has been marked for identification as General Counsel's Exhibit No. 8 and I'll ask you if you can identify that, please. A. This is a proposal submitted by the Company to the Union on October the 11th, 1966.

Q. All right. Can you tell us where the provision concerning the pensioners is located on this proposal? A. The general provision on pensioners is located on pages 1 and 2 and part of page 3; the part with reference to the pensioners insurance is located on page 4 of this proposal.

Mr. DuRose: General Counsel moves that General Counsel's Exhibit No. 8 be received into the record.

Trial Examiner: Hearing no objection——

Mr. Curran: No objection.

[33] Mr. Riemer: No objection.

Trial examiner: —I'll receive it.

(The document above-referred to heretofore marked General Counsel's Exhibit No. 8, was received in evidence.)

Q. (By Mr. DuRose) You stated that another proposal was received on October 20th? A. Yes.

Q. And that the provision concerning medical insurance for pensioners was the same? A. Yes.

Q. Since October 1966, has there been any discussions between the Company and the Union concerning the medical insurance for retired employees? A. Not to my knowledge.

Q. If there was some, you would have knowledge of it? A. I would assume so, yes.

Mr. DuRose: No further questions.

Trial Examiner: All right.

I believe you wanted his statement?

Mr. Curran: Yes.

Trial Examiner: All right. Do you have one?

Mr. DuRose: Yes, sir.

Trial Examiner: Give it to Mr. Curran.

Mr. Riemer: Am I permitted to ask a few questions before this statement——

[34] Trial Examiner: Yes.

Mr. Riemer: —is made?

Trial Examiner: Yes, go ahead.

I spoke too soon. I assumed that you weren't going to ask any questions by your silence, but I should have asked you.

Mr. Riemer: There are a few.

Cross Examination

Q. (By Mr. Riemer) Mr. Williams, early in your testimony in response to a question by Mr. DuRose, you said that in 1960 the Company had increased its insurance program for retirees by ten dollars to fourteen dollars. What do you mean by ten dollars to fourteen dollars? A. This was for daily room coverage charges at a hospital.

Q. When did the Company for the first time make any contribution to the premium of retired employees by agreement with the Union? A. 1962.

Q. That was during the negotiations? A. The contributions started at the conclusion of the negotiations, this is correct.

Q. In General Counsel's Exhibit 6, the 1964 agreement, starting on page 1 and continuing thereafter, there appears a lot of black lines. Will you tell us briefly what those lines represent? [35] A. Wherever you see in the copy of that contract a portion of the language underscored, this is indicative of a change that was made in the labor contract, in the contract that has been agreed——

Q. From the previous 1962 agreement? A. From the previous agreement, yes.

The underscoring doesn't indicate that every word in the previous language was changed, but there was a change in this particular paragraph or section.

Q. Oh, Mr. Williams, I want to direct your attention back to the meeting that you had or the conference that you had in the afternoon of March 21, 1966 with Mr. John Rodgers and Mr. William Harris. Perhaps I misunderstoood.

With respect to this question of whether the insurance for the retirees was optional or not optional, will you relate that conversation, please, just that portion of it? Do you recall it? A. The conversation at that meeting was a very brief conversation with regard to that point. Mr. Rodgers stated that the insurance for the pensioners had always been optional.

Q. Now, did the Union agree or disagree with that position? A. I don't think we questioned that position at all,

I don't think we either agreed or disagreed. He made the [36] statement, I don't think we had any comment on that particular remark.

Q. Then, what did Mr. Rodgers say on the question of bargaining about insurance for the retiree? A. Well, Mr. Rodgers took the position in that meeting that the Union had no right to bargain for people who were already retired on any matter and——

Q. And what was the Union's position with respect to that? A. We objected to that. It was our position that we did have a right to bargain for them and we had bargained for them in the past.

Mr. Riemer: That's all. Thank you.

Mr. Curran, That's all.

Mr. Curran: All right.

Mr. DuRose: Let the record show that I have given Mr. Curran a copy of the affidavit, that is in my possession, from Mr. Williams.

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Cross Examination

Q. (By Mr. Curran) Mr. Williams, I think you testified that at least since 1950, there has been a medical insurance [37] program for retired employees, is that correct? A. I believe that's what I said, yes.

Q. Now, I think you testified that that was collectively bargained, the program that was in effect in 1950, the medical insurance program? A. Yes, I think so.

Q. Was it ever reduced to a written agreement? A. No, sir.

Q. Actually, isn't it true, Mr. Williams, that it was not until 1960 that there was a signed agreement between the Company and Union providing for medical insurance for retired employees? A. I believe the first written agreement on it, Mr. Curran, came in 1962.

Q. I have had marked for identification Company's Exhibit 1 and I ask you if you have ever seen that document, what it is. A. Yes, I have.

Q. That is the agreement which is signed by the president of your Union and Mr. John Rodgers providing for the medical insurance for retired employees, is it not? A. Yes, it is.

Mr. Curran: I offer it in evidence as Company's Exhibit 1.

Trial Examiner: Any objections?

[38] Mr. Curran: Are there any objections?

Trial Examiner: I'm waiting for objections to its being received.

Mr. Riemer: No objection.

Trial Examiner: Will the Reporter show an absence of objections. Receive it into the record, Mr. Reporter.

(The document above-referred to was marked Company's Exhibit No. 1 for identification and was received in evidence.)

Trial Examiner: My notes don't show that General Counsel's Exhibit 8 is received. I want to know if my notes are correct. Once before, I was wrong.

Mr. DuRose: I thought I did.

Trial Examiner: All right.

Mr. DuRose: Well, I offer it at this time.

Mr. Riemer: It's the Company's proposal of October 11, 1966.

Trial Examiner: If you feel it's in, okay.

Mr. DuRose: I re-offered it at this time.

Trial Examiner: Just to make sure?

Do you know what G. C. 8 is?

Mr. Curran: Yes, the Company's proposal of October 11, 1966.

Mr. Riemer: No objection.

Trial Examiner: All right, gentlemen.

[39] Mr. Riemer: No objection.

Trial Examiner: I'll receive it, G. C. 8 is received.

Respondent's Exhibit 1 has been offered and received.

May I look at it so I can follow the testimony?

Go ahead, Mr. Curran.

Q. (By Mr. Curran) Mr. Williams, you testified in your direct examination that on November 23rd, 1965 the Union asked the Company to sit down with it and work out a program of benefits for those who were going to be covered by Medicare? Those retirees, is that correct? A. For those, yes, for those who would be covered by Medicare, this is right.

Q. And then you testified that what, you had no further conversations with anybody from the Company until you had one with David Redle around the 1st of March of 1966, is that correct? A. This is my recollection of it, yes.

Q. And that you didn't push the matter, in a sense, with Redle, but in a sense you were citing it as a matter of or example of some Company delay, is that correct? A. Yes.

Q. You testified you had no further communication with the Company in respect to this matter until you got a telephone call from John Rodgers on March 21, 1966, is that correct? [40] A. Yes, I received a call from John in the morning of March 21st.

Q. Do you recall giving an affidavit to the NLRB Field Examiner, John Harston, on April 29, 1966? A. Yes, I recall discussing it with Mr. Harston.

Q. Do you recall testifying or making this statement in that affidavit?

"The Union, as I recall, asked the Company to consider the alterations two or three times during the period that negotiations were held."

This is with reference to the meetings that were held in August 1965 to December 1965. Do you recall making that statement.

A. Mr. Harston asked me how many times——

Q. I just asked if you recall making that statement. A. Yes, I do.

Q. All right. Do you recall also making in that statement or in that affidavit the following statement?

"On March 10 or 11, John Rodgers from the Company called me and said that the Company would have a proposal by March 17 or 18."

A. No. No, I don't.

Q. I'll show you the affidavit and direct your attention to the top of page 2 and see if that now refreshes your recollection. [41] A. It's there, but I don't recall it. I recall the thing in a little different sense than it's stated there.

Q. Well, was there such a conversation with John Rodgers on or around March 11, 1966, with John Rodgers? A. I can't say there was. My memory and recollection doesn't serve me that there was, there could have been because we conversed frequently.

Q. Do you recall stating in that affidavit?

"On March 21, 1966, the Labor Relation Committee met with Rodgers and the Plant Manager, Harris. Harris told us that the Company had decided to cancel the Pensioners Insurance and substitute a three-dollar allowance toward Medicare payments. The Union said that it would not agree to this plan and at this point the meeting ended."

Do you recall making that statement?

A. Well, I recall saying that, yes. I said a lot more than that, but it doesn't appear here. I said that, that's right.

Q. Do you also recall the fact that in 1960, the Company challenged the Union's right to negotiate pensions and medical insurance programs for employees who were already retired? A. I recall the Company challenging the Union's right, yes. I can't specifically say it was in 1960, but I do recall it happening, yes, in fact.

The Company proposed that the Union withdraw from its [42] right to bargain for pensioners and we refused as a matter of contract.

Q. Now, Mr. Williams, at the time you had your meeting with the Company on March 21, 1966, between the time you first brought up this question of some sort of supplemental program to Medicare—you testified, on November 23, 1965, or between November 23, 1965 and March 21, 1966—did the Union ever present a proposal to the Company of the type of program which the Union would be willing to agree to? A. No, we didn't.

Q. Did you ever ask the Company for a meeting at which time you could present such a proposal to it? A. There was no occasion, we were still waiting on an answer to the question.

Q. I take it your answer is, "No, we did not"? A. No, we did not.

Trial Examiner: I take it that is not the General Counsel's position that the Company did refuse, so you don't have to go into it. That is not General Counsel's position and if it is, this is the time for him to say that. Here you give it a different slant because, as I understand it, the case is that they refused to meet with respect to their own actions, the Company's actions, is that correct, Mr. DuRose?

Mr. DuRose: That's correct.

Trial Examiner: All right, so that will eliminate a lot [43] of unnecessary cross examination.

Mr. Curran: I don't think there is an allegation in the Complaint of a refusal to meet. There is an allegation of refusal to bargain by taking certain unilateral action but not of a refusal to meet.

Trial Examiner: Well, but paragraph 9 is saying, "the Respondent without giving the Union an opportunity to bargain," and I suppose that means to meet, in any case. If that's the case, that still narrows the issue.

My point is that no one from the General Counsel or Mr. Riemer's office contends that there is any bad faith on the part of the Company in refusing to discuss with the Union any Union proposals. In fact, they don't claim there were any Union proposals, is that correct?

Mr. DuRose: That's correct.

Trial Examiner: All right. I'm trying to narrow the issues.

Mr. Curran: Yes, paragraph 9 of the Complaint says it was on or about March 24th, and there's no allegation that the Company did anything before March 24 to provide any basis for the Complaint.

Trial Examiner: Well, that's my whole point. You don't have to examine on that, they don't contend they offered something or that you refused to discuss it.

Q. (By Mr. Curran) Now, Mr. Williams, at this time in [44] March of 1966, there was in effect a binding agreement between the Company and the Union relating to the medical insurance for retired employees, was there not? A. Yes, we think so.

Q. And that agreement was to expire by its terms when? A. At the termination of the pension agreement.

Q. When was that? A. Well, the Pension Agreement was due to terminate June 28th, 1967, or the nearest termination date of the agreement, collective bargaining agreement, in effect at that time.

Q. Now, Mr. Williams, you're vice-president of Local Union No. 1? A. Yes, sir.

Q. Of the Allied Chemical and Alkali Workers? A. Yes, sir.

Q. You are elected to that office by secret ballot, are you not? A. Yes.

Q. Who is eligible to vote in the election of the union of which you're a representative? A. All members of our Union.

Q. All members? A. Yes.

Q. Are those people, who, say, normally have worked for the Company and then have left our employ, are they eligible [45] to vote in such an election? A. No.

Q. Is it just those people who are on the active payroll coupled with the layoffs and the employees on leave of absence? A. Those people who are the active payroll who are members of our Union are eligible to vote in the union election.

Q. How about a man on leave of absence? A. A man on leave of absence is eligible to vote.

Q. A man on granted leave of absence such as a union official on a leave of absence would be?

A man who would be on military leave of absence would be eligible to vote?

A. (No response.)

Q. If he was sick, if he was sick and was off, not working for that reason, or if the man had an industrial accident

or because of sickness—— A. A man off sick, personal sickness, or if he had an industrial sickness, he is eligible to vote, yes, sir.

Q. If the man quit the employ of the Company prior to the election, is he eligible to vote? A. No. No, he's not.

Q. A retired employee is not eligible to vote, is he? A. No, he's not eligible to participate in union elections.

Q. His title is—if he's retired from employment with the Company and in good standing with the Union—he becomes an [46] honorary life member, is that right? A. This is correct.

Q. If you have any contract ratification voted on by the employees at our plant, a retired pensioner cannot vote in such an election, can he? A. No, he cannot.

Q. We will call him a retiree or pensioner, you will understand what I mean? A. Mm-hmm.

Q. They're not carried on any seniority list, are they? A. As they use the term "seniority list" between the Company and the Union, no.

Q. Are there any terms or provisions of the collective bargaining agreement between the Company and the Union which is in evidence as General Counsel's Exhibit 6, do any of the terms and provisions——

Trial Examiner: We have several, do you mean to name them or generally cover them all?

Mr. Curran: I want to take the October 20, 1964 collective bargaining agreement in evidence as General Counsel's Exhibit 6.

Q. (By Mr. Curran) You're familiar with that document, are you not, Mr. Williams? A. Yes.

Q. You participated in the negotiation of it, did you not? [47] A. Yes, I did.

Q. And you are, in fact, one of the signatory parties? A. Yes.

Q. Do any of the terms and provisions of this contract apply to pensioners or retired employees? A. No, they do not.

Q. Now, you participated in the negotiation of all of the pension agreements that have been in effect between the Company and Union since 1950 to date, is that not correct? A. That's correct.

Q. Now, under that Pension Agreement, has it not always been true, Mr. Williams, that a man who is an employee within the meaning of the labor agreement is not entitled to pension benefits at the same time he is an employee? A. At the same time he's an active employee, that's right.

Q. Yes. In other words, a man who is covered by the collective bargaining agreement may not be a pensioner at the same time? A. I wouldn't exactly agree with that in its entirety, Mr. Curran.

Trial Examiner: Is this going to be the matter of interpreting those (indicating), he isn't going to do this? They're in evidence and I'll read them.

Mr. Curran: Well——

Trial Examiner: I think it's pretty general even though [48] I haven't seen those that if you're an employee and working, you don't get a pension. If that's the point you want to bring out, I think you have done it.

Mr. Curran: And it's contractually so.

Trial Examiner: I dare say this may be so unless these are different contracts from those.

Q. (By Mr. Curran) That is correct, Mr. Williams, if you're an employee and working, you can't collect a pension under this agreement (indicating) while you're an employee and working? A. While you're in the plant and actively at work, you can't collect a pension, that's right.

Q. Are there any pensioners or retired employees, are there any former pensioners or retired employees, that is, people who have gone off on a pension from the bargaining unit out there, have any of them been reemployed by the Company, to your knowledge? A. You mean in the hourly people?

Q. Yes. A. To my knowledge, no.

Q. Mr. Williams, the Pension Agreement currently in effect provides for an investing of pension for an employee

who has 15 years of service and has attained the age of 40? A. That's correct.

Q. If a man has 41 years of age and worked for 15 years and [49] leaves our employ maybe to go to California, when he's 65 he can apply for pension, can't he? A. Not exactly, he must have 15 years, pension years of credit. He may have worked 20 and have only 14 years of pension credit.

Q. This hypothetical employee, if he has 15 years at 65, he may apply and receive a pension, is that correct? A. Yes, sir.

Q. There are a substantial number of employees throughout Ohio, are there not, people who have left our employ after attaining 15 or more than 15 years of pension credit and who have attained the age of 40—— A. I don't know what you mean by "substantial number." There must be a half dozen or so.

Q. Do you represent those employes for the purpose of collective bargaining?

Mr. DuRose: Objection.

Trial Examiner: I'll sustain that objection.

Mr. Curran: Mr. Examiner——

Trial Examiner: The parties have agreed on what is a bargaining unit. You're not going beyond the agreement, you have agreed with General Counsel as to what the bargaining unit is and we're going to stick to that.

Mr. Curran: That's right, if the General Counsel agrees that the bargaining unit does not include retired employees.

[50] Trial Examiner: Well, I'll sustain the objection.

That's a question of law, gentlemen, as I see the pleading and as I follow the evidence. I haven't found yet as to whether retired employees may be the subject of collective bargaining. I may be wrong and I don't mean to prejudge the case, if that is a case question, or I wish you would research it. It's troubling me.

As of now, I don't mean to say I've made up my mind. I thought I knew a lot about law but I guess I don't.

Mr. Curran: This question is worthwhile——

Trial Examiner: I see your point, I know exactly what you're driving at.

Mr. Curran: —since the General Counsel in paragraph 5 of the Complaint stated what he thought was the bargaining unit——

Trial Examiner: Yes.

Mr. Curran: —to-wit, "The following employees at Respondent's Barberton, Ohio plant," and he cites the language, "All hourly rated employees employed at the Respondent's Barberton, Ohio plant . . ."

Thereafter, in the series of paragraphs in the Complaint, he mentioned the employees who were in the unit set forth in paragraph 5 but then added retired employees.

Trial Examiner: Right, that's a question of law as to whether this Union can bargain for them.

[51] Mr. Curran: First, the point I was trying to make is that the retired employees are not the unit set forth in paragraph 5 of the Complaint. They're not working; they are not at Respondent's Barberton, Ohio plant; they are not hourly rated employees of the Company.

Trial Examiner: It's obvious if someone leaves at this plant with 15 years retirement credit and goes to work for another employer, he's obviously not in the unit, but the question is whether or not the Union may bargain for their pension rights. I don't know the answer, that's this case as I see it.

Now, I'm not going to decide it now. It may be this case is more a question of law than it is a question of fact. I don't want to prejudge the case but I suspect that the facts are not too much in dispute.

Mr. Curran: No further questions.

Trial Examiner: All right.

Is there any redirect? I'm waiting to hear——

Mr. DuRose: Yes, sir.

Trial Examiner: Oh, I spoke out of turn again.

Redirect Examination

Q. (By Mr. DuRose) Mr. Williams, I ask you if you recall making a statement to Mr. Harston which appears in your affidavit to the effect that:

"The Union, as I recall, asked the Company to consider [52] the alterations two or three times during the period that the negotiations were held."

And, as I recall your testimony earlier, you testified that on November 23rd, you asked or the Union asked the Company to sit down and bargain concerning the effects of Medicare.

Would you explain that further for us, please?

A. Well, during this series of meetings in the late summer and early part of fall of 1965, we had, I believe, we had 20 some separate meetings with the Company involving salary issues and——

Mr. Curran: I'm going to object.

Trial Examiner: All right.

Mr. Curran: This is——

*Trial Examiner: You're just asking him to repeat what* he said, on redirect. I don't think it's proper redirect and I'll sustain the objection.

Mr. DuRose: There's been a question as to the credibility of the witness in that there seems to be a dispute as to what number of times this subject came up in the series of meetings——

Trial Examiner: Correct, he said one thing, I assume, in direct and another on cross. It's necessary for me to assess that but you don't come back and go over it again.

Mr. DuRose: I don't intend to go over the entire discussions, I think it's fair to explain what the discrepancy [53] may be to see if there's a reason for it.

Mr. Curran: I'm going to object. The witness on cross said he had no recollection of this, I believe.

Mr. DuRose: That's not correct. He started to explain it, and you asked him to answer yes or no.

Trial Examiner: I did?

Mr. DuRose: No, the witness started to explain the discrepancy and Mr. Curran directed him to answer yes or no, which he did.

Trial Examiner: Well, I will adhere to this ruling, this is not a proper redirect. You may, by a proper question,

bring out what you want to, but I don't think the question is properly framed. What you're asking him to do is to repeat all over again what happened during this period, and you brought that all out on direct.

Go ahead.

Q. (By Mr. DuRose) Well, let me ask you, Mr. Williams. During your series of meetings in 1965, late 1965, how many times that you can recall did the subject of medical insurance come up?

A. I can give the same answer I gave Mr. Harris on that. I know we asked the question on November 23rd, 1965. It may have been asked on one or two other occasions, I'm not positive. I'm not positive, I can't say it was, I can't say it was not.

[54] Mr. DuRose: No further questions.

Mr. Riemer: May I be permitted——

Trial Examiner: Of course.

Recross Examination

Q. (By Mr. Riemer) Mr. Williams, doesn't the Pension Agreement between the Union and Company have any provision for any early retirement in the event of disability? A. Yes, it does.

Q. Within your knowledge, has any man been recalled to work, any hourly rated employee been recalled to work by the Company upon recovery from disability? A. Not to my knowledge.

Q. How many retirees in the sense of men eligible for pension, formerly active employees who are no longer working with the Company are there, approximately how many? A. You mean people currently retired?

Q. Yes, sir, at the Barberton plant. A. I can't give the exact figure, but it's approximately 200, give or take the number that's deceased in the last year.

Q. All right. You knew that the letters attached to General Counsel's Exhibit 7 were sent to the retirees, did you not, Mr. Williams? A. Mr. Harris had advised me they were going to send them, and since that time as people who

are currently retired or were retired at that time came around the Union Hall, they [55] showed me the letters, several of these.

Q. Do you know, did you ever ask the Company to give you any information concerning the response that was made by the retirees to those letters? A. Yes, we did.

Q. And what was the answer of the Company? A. Well, this occurred——

Q. And can you tell us, please, who gave the answer and approximately when the demand and response was made and given? A. I can't give the exact date, but during our series of meetings through August and September and early October in 1966, on one occasion, we asked the Company how many people had actually cancelled their insurance and taken the three dollars in lieu of insurance, and Mr. Harris answered and he said he thought the number that had actually cancelled was 15 or in the neighborhood of 15. He wasn't exactly certain.

He said the Company could check that figure and let us know. I told him we would appreciate it if he would. He hasn't.

Mr. Riemer: Thank you. That's all.

Mr. Curran: May I ask a question?

Trial Examiner: All right.

[56] Q. (By Mr. Curran) Mr. Williams, after March 23, 1966, did the Union ever request a meeting with the Company for the purpose of negotiating an agreement covering medical insurance for retired employees? A. Not to my knowledge, Mr. Curran.

* * * * * * * * * *

[61] Mr. Curran: Mr. Examiner, I would like the Reporter to mark three exhibits. The first one is Company's Exhibit 1.

Trial Examiner: You have already gotten one marked.

Mr. Curran: Pardon me, as Company's Exhibit 2.

Decision and Direction of Election in Board's Case No. 8-RC-270, in the matter of the Pittsburgh Plate Glass Com-

pany, Columbia Chemical Division, and Allied Chemical and Alkali Workers of America, Local No. 1.

(The document above-referred to was marked Company's Exhibit No. 2 for identification.)

Mr. Curran: Company's Exhibit 3 is Notice of Election, United States of America, National Labor Relations Board, which Notice of Election was an election which would have authorized the Charging Party here to enter into an agreement which required membership in the Union as a condition of employment.

(The document above-referred to was marked Company's Exhibit No. 3 for identification.)

Mr. Curran: And Company's Exhibit 4, a Supplemental Notice of Election for the U.A. election.

(The document above-referred to was marked Company's Exhibit No. 4 for identification.)

[62] Mr. Curran: I offer Company's Exhibit 2, 3, and 4.

Mr. DuRose: General Counsel has no objection.

Trial Examiner: Mr. Riemer?

Mr. Riemer: I have no objection to Company's Exhibit 2.

Trial Examiner: All right.

Mr. Riemer: I object to Company's Exhibit 4.

Trial Examiner: There being no objection to Company's 2, mark 2 received, Mr. Reporter.

(The document above-referred to heretofore marked Company's Exhibit No. 2, was received in evidence.)

Trial Examiner: How about 3, gentlemen?

Mr. Riemer: All right, I object to 3 and 4, your Honor.

Trial Examiner: All right. Let me see them, please, I have to pass on them.

Is this No. 2 a Decision and Direction of Election with respect to this particular unit?

Mr. Curran: Yes, sir.

Trial Examiner: I just wanted to know. At the time you

had them identified, I had no way of knowing. I just want to see them so that I can better understand this.

Exhibit No. 2 is in. I'll take each one up separately. As to 3, what do you offer 3 for, so I can pass on the objection, Mr. Curran?

Mr. Curran: I offer 3 for the particular language of [63] those who are eligible to vote in the election, the union authorization election of February 16, 1949; and since Company's Exhibit 4 was a supplemental to it, in order to keep the record complete with respect to the direction of the election, I offer that.

However, I offer 3 in particular for the fact that the Board indicated who was eligible to vote and that the employee had to be working and at an hourly rate of pay at the plant.

Trial Examiner: But that isn't the issue before me. The question isn't whether or not they're eligible as to the vote, it's whether the Union may bargain for them.

Mr. Curran: I recognize that, sir.

Trial Examiner: I don't see the relevance of this.

Mr. Curran: If we can establish first, as I think, that it's the status of these employees that the Board thought they had so little connection or interest in the bargaining unit that it wouldn't even permit them to vote in the election——

Trial Examiner: Well, the evidence in before me is that there were no retirees for the union bargaining—assuming it could bargain prior to this time. The allegation, this is in the Complaint, plus Mr. Williams' testimony, which is that they didn't start bargaining, using this in the loose sense, not in a conclusionary sense, his testimony [64] is that they didn't start discussing the retirees until 1949 and '50, and therefore, I think, assuming it's relevant, it is not helpful to that issue because it goes prior to the time that Mr. Williams mentioned in his testimony and prior to the time mentioned in the Complaint.

I think the Complaint alleges that the bargaining relationship started January 1st, 1949. All right.

Mr. Curran: The bargaining relationship began, Mr. Examiner, you might say as a result of these three offered exhibits.

The first one is the one directing an election. The Union then was certified for that and then they petitioned for a U.A. election and they won that election. They were now not only certified but they were certified to bargain for a union shop.

Trial Examiner: That's what you say, I have to go by the record. The record so far is only what Mr. Williams testified to.

All right, I just want to make an explanation of why I'm excluding them so that the Board may have the benefit of my thinking.

Mr. Curran: You're excluding the exhibits?

Trial Examiner: Not 2, 2 is in. The parties have not objected to it but I don't see the relevancy of 3 and 4 and Mr. Riemer's objection is sustained.

Mr. Curran: I would further like to say——

[65] Trial Examiner: All right, I'll withhold ruling.

Mr. Curran: —since they are in a sense public documents, that I think they should be received in the record so that reference can be made for any reviewing authority because it is particularly difficult for anyone to obtain these documents now since they are some 18 years old, at least.

Trial Examiner: Well, they will be in the rejected exhibit file. They will be there so that the Board can look at them.

Mr. Curran: But may the Board consider them?

Trial Examiner: Well, if the Board reverses me, yes. I'm not infallible. I guess you gentlemen have read the Board's decision where they have reversed me.

I see your point, but I don't agree with you, Mr. Curran. I don't see its relevancy and I'll take judicial notice of the Board's rule that only eligible persons may vote in either a R. C. election or a unit election. I'll take official notice of that document. In my opinion, it is not admissible, but it will be in the rejected exhibit file.

Put these in the rejected file, Mr. Reporter, Exhibits 3 and 4 of Respondent.

(The documents above-referred to heretofore marked Company's Exhibits Nos. 3 and 4, were rejected.)

Trial Examiner: All right, come forward. Would you raise your right hand?

[66]

**John M. Rodgers**

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Please be seated and give your name and address to the Reporter.

The Witness: I'm John M. Rodgers, Director of Industrial Relations of the Barberton plant of the Pittsburgh Plate Glass Company.

Trial Examiner: What is your home address?

The Witness: 606 Castle Avenue, it's Barberton Ohio.

Direct Examination

Q. (By Mr. Curran) What is your position with the Company? A. Director of Industrial Relations of the Barberton plant.

Q. How long have you held that position? A. Since 1954.

Q. How long have you been employed at the Barberton plant of the Company? A. Since June, 1952.

Q. Mr. Rodgers, under whose supervision and direction and custody are the Company's records with respect to labor relations and bargaining matters kept? A. The Industrial Relations Department.

Q. Are they under your general supervision? A. Yes, sir.

[67] Q. Mr. Rodgers, when was the first time the Company ever engaged in collective bargaining with the Union here with respect to the medical insurance for retired employees? A. In 1960, in January.

Q. Prior to 1960, did the Company have any medical insurance program in effect for retired employees? A. Yes, it did.

Q. Do you know how long we had such a program in effect? A. The program was in effect sometime prior to 1949, about 1949.

Q. Did that program require any contribution from the Company? A. No, sir, it did not.

Q. The employees paid the entire cost of the program? A. Yes, sir.

Q. Now, how many programs were there in effect? Was there just this one that was in 1949? A. Yes.

Q. How long did that program continue? A. That program continued until 1954.

Q. What happened in 1954? A. There was a general consolidation of the program in effect and we had a plan that provided a nine and ten dollars a plan and then it was determined that the pensioners would receive as a group the benefits of a ten dollar a day plan [68] thereafter.

Q. Was there any bargaining with the Union with respect to that change in 1954? A. No, sir.

Q. Was that change ever incorporated into any form of an agreement with the Union? A. No, sir.

Q. Now, after 1954, did the Company continue to offer medical insurance for retirees? A. It did.

Q. When was the first time that the Company bargained with the Union over this——

A. As Mr. Williams stated, it commenced on the basis of early discussions for extension, approximately in November 1959, the latter part of October 1959, and extending over, extending over to about in 1960.

Q. What was the result of those negotiations? A. The result was the arrival at an agreement, a signed agreement, which extended to future pensioners, those retiring subsequent to that agreement, a program of medical and insurance benefits which provided a fourteen-dollar a day, 70-day plan, fourteen dollars daily benefits for 70 days in the hospital, 20 times the daily benefits for extras, and it provided a two-hundred dollar surgical schedule and five dollars for in-hospital medical visits.

[69] Q. What you say, you've said a ten dollars, you identified a ten dollar a day plan and a fourteen dollar a day plan. What you mean by that? A. Those differences are that those people who are retired prior to the execution of the 1960 agreement had a program of insurance that provided only a ten dollars a day, daily room and board for 70 days, and it did not have a surgical or medical benefit feature in it.

The 1960 agreement, commonly termed the fourteen-dollar a day plan, had the other benefits that were previously enumerated.

Q. After 1960, did you again bargain with the Union with respect to a medical insurance plan for retired employees? A. We did again bargain and negotiate in 1962 relative to the future retirees on the program, yes.

Q. And the effect of that was to do what? A. The Company entered into an agreement to provide a two dollar per month contribution towards the cost of the fourteen-dollar a day plan for the pensioner who retired after June 28, 1962 on the condition that it would be applicable only if they carried the plan that was offered to them.

Q. I show you this document and ask you if you can identify it, please. A. This is not the right one.

Q. Pardon me?

[70] Trial Examiner: That would be Respondent's 5?

The Witness: 1962, this is it, yeah.

This is the Memorandum Agreement signed by the representative of the Company, myself as representative of the Company, and by Donald Walker who was then President of the Union, dated the 29th of July, and it provides that the Company would agree to provide a reduced Hospitalization and Surgical plan for employees retiring after June 27th, 1962, in which the employee paid the full amount of the premium.

Q. (By Mr. Curran) Now, this was an agreement of 1962—— A. Yes.

Q. —with respect to the medical insurance for employees who retired after June 27, 1962?

Mr. Curran: I offer this in evidence and ask to have it marked as Company's Exhibit 5.

Trial Examiner: It's Respondent's Exhibit 5.

Mr. Curran: We have been talking about them as Company's exhibits.

Trial Examiner: I don't care what you call it as long as we know it isn't General Counsel's.

Mr. Curran: All right.

(The document above-referred to was marked Company's Exhibit No. 5 for identification.)

Mr. Curran: Is there any objection?

[71] Trial Examiner: They haven't heard you offer it.

Mr. Curran: I'm sorry. I offered Company's Exhibit 5.

Mr. DuRose: Before taking a position, could I ask a question on voir dire of the witness?

Trial Examiner: Voir dire is limited to authenticity of the document. What you really want to do is have advanced cross examination. It's all right with me if it's all right with Mr. Curran.

Mr. DuRose: I have no objection.

Trial Examiner: I'll receive what is marked as Respondent's Exhibit 5.

Mr. Riemer: I have no objection.

Trial Examiner: 5 is received, Mr. Reporter.

(The document above-referred to heretofore marked Company's Exhibit No. 5, was received in evidence.)

Q. (By Mr. Curran) Now, in 1964, you had negotiations again with the Union, did you not, with respect to the medical insurance for retired employees? A. Yes, we did.

Q. You entered into an agreement with them? A. Yes, we did.

Q. And I believe that's in evidence now as General Counsel's Exhibit 5.

Now, Mr. Rodgers, do you recall attending a meeting in November, 1965, which was a matter of the supplemental program for Medicare, where that topic came up? [72] A. Yes. I did.

Q. Do you recall when the meeting took place and who was present? A. November 23rd, it took place at the Holiday Inn in Akron, and present for the Union was the Union Committee as had been stated here, Mr. Williams, Mr. Blouir, Mr. Lowry, Mr. Campbell, and Mr. Rudd.

Representatives of the Company were Mr. Harris, Mr. Koblentzer, and myself, and Mr. Rimlinger, and Mr. Jones.

Q. Was the meeting called for that purpose or for some other purpose? A. No, the meeting was called for other purposes but——

Q. But this subject did come up.

Do you recall what was said and who said it?

A. The subject came up towards the last part of the meeting. It was raised by Mr. Williams and at that time he made an inquiry of the Company about what the Company's plans were in connection with the four-dollar contribution the Company was making and whether we had an intent to reduce it in the event of Medicare and he asked how we felt the factors of Medicare and those benefits would tie in with our program insurance.

We responded that——

Q. Who responded for the Company? A. I responded that this was a matter that with the advent [73] of Medicare was confusing. It was not clearly understood by very many people at this time but it was a matter we would like to look into and take the subject under advisement.

Q. Is that all you recall that you said about that subject? A. Yes, sir, that is all I recall.

Q. After that meeting was over, do you know, what, if anything, was done with respect to investigating this matter? A. Yes, we reviewed the matter, reviewed the matter locally with our people.

Q. That is, with a management of the Barberton plant? A. The management of the Barberton plant, and the matter was also referred for discussion to our Industrial Relations Department, our Pittsburgh office, and our insurance carrier, the Equitable Life Insurance Society, and we made our observations to the intent of determining what the local

insurance carriers, the private insurance carriers, in effect, Equitable Life Insurance, may be doing to provide some supplemental form of insurance.

Q. As a result of this inquiry and discussion that you had, did you come out with any program? A. No, Equitable had not come up with any during this period.

Q. Do you know if any other insurance carriers had come up with a program to supplement Medicare? A. Well, we were——

[74] Mr. Riemer: Objection.

Trial Examiner: I wonder whether this is hearsay unless there is present a representative of the Union.

Mr. Riemer: Your Honor, the question pending was—would you read it, please, Mr. Reporter?

Trial Examiner: Yes, read it, Mr. Reporter. Perhaps I misunderstood your reason.

(Question read.)

Mr. Riemer: It's other insurance carriers. I did not object to the previous question which was related to the Equitable Life Insurance carrier.

Trial Examiner: All right. The fact that they had discussions, in my opinion, is admissible, the nature of the discussions even with their own carrier in the absence of a representative of the Union is inadmissible, as hearsay.

As to the fact that you didn't object to it, I'm still ruling it's hearsay, so I'll sustain this objection.

Mr. Curran: I think this is relevant, Mr. Examiner. Part of the Union's or General Counsel's case here is an allegation of the unilateral action taken on March 24, 1966.

Now, I think this evidence is relevant to indicate why, whether that was unilateral action or not, why it was done on March 24, 1966. It's our position——

Trial Examiner: If it's a bargaining right and if it's unilateral, then there is no defense. I'm not saying that [75] it's bargainable or that it's unilateral. The Board has held that you are under an obligation to bargain with the Union on bargainable matters unless they have waived that

right. The reason you did, according to the Board's decision, is immaterial and I'm going to sustain the objection.

Mr. Curran: The Board has ruled, Mr. Examiner, that the employer may act with the idea that he may bargain later if circumstances require him to bargain at that.

Trial Examiner: There is an impasse or an agreement expressed or implied over what goes on between him and a third party and with the Union not present, it is not admissible. I'm adhering to my original ruling.

I will not prevent you from showing that there were certain actions between him and the Union or that an impasse resulted in no action until later on or that there was reason if it was unilateral. There are Board's decisions to that effect. I want the record to be clear that I'm not preventing you from developing that point.

Mr. Curran: I'm not sure I understand your point.

Trial Examiner: You said you wanted to show there was reason he took unilateral action——

Mr. Curran: No, why he took the action of March 24. If you determine it to be unilateral——

Trial Examiner: I didn't determine it to be unilateral, I say if it was unilateral——

[76] Mr. Curran: It can still be excused.

Trial Examiner: Make an offer of proof. It may be that I'll change my mind. I still don't see its relevancy.

Mr. Curran: I would offer to prove through this witness that in toto the subject of a supplemental program for Medicare was a matter which was under intensive discussion throughout the insurance industry and between our Company and our carrier, that it was a problem for consideration for other carriers in the industry; that throughout this period, no carrier had come up with a plan; that the first we knew of another plan that would in any way be available was approximately March 15, 1966, just 16 days before a person who wished to sign up for Medicare had to sign up; and that thus the time at which we could go to the Union that we finally got the first fruits of this sort

of program and the time we could actually come back to the Union here saying, "Here is something you can consider," was March 15, 1966; and——

Trial Examiner: And this was called to the attention of the Union? That's what I have been trying to find out from you before I ruled on the objection.

If it was, I will allow it; if not, it may remain in as an offer of proof.

Mr. Curran: Well——

Trial Examiner: Don't argue with me, I'm just explaining [77] my ruling.

Was it called to the attention of the Union?

Mr. Curran: I think the testimony of both Mr. Williams and Mr. Rodgers already was that the Company said on November 23rd that they would have to take this matter under consideration thereafter. I think Mr. Williams, I think he admitted at least in his affidavit that he had another conversation with Mr. Rodgers March 10th and 11th.

Trial Examiner: Those are all admissible, I haven't stopped you there.

Mr. Curran: Yes. Yes, and that part of the conversation on March 10th or 11th related to the Company's program—related to the Company's problem of getting a program.

Trial Examiner: All right. I will allow you to bring that out with the witness but your offer of proof, I still reject. I don't think it's admissible.

Q. (By Mr. Curran) Mr. Rodgers, after November 23, 1966 and prior to March 21, 1966, did you have occasion to have any conversation with any representative of the Union concerning these medical insurance programs? A. Yes. Yes, as was stated, approximately March 10th in——

Trial Examiner: March what?

The Witness: March 10th.

Trial Examiner: I didn't hear you. Thank you.

A. (continuing) I had a conversation with Bill Williams in [78] connection with other matters that he was discussing and, of course, in that discussion he inquired whether

we had heard anything or had an answer relative to the question he raised on the medical insurance program.

I indicated that we were still studying it and taking a look at it and we expected we might have something at an early date. I believe I expressed it as within a week to ten days.

Q. All right. Now, after that discussion with Mr. Williams on March, approximately March 10, 1966, did you have occasion to have any further discussions with any representative of the Union? A. We did have a meeting with the Union Committee on March 21st, 1966.

Q. That meeting was held where? A. It was held at the Barberton plant and Mr. Harris's conference room located in the main office.

Q. Do you know who arranged for that meeting? A. Yes, I called Bill Williams and suggested getting together about 3:00 o'clock——

Q. And present for the Union was—— A. Present was the same committee previously named.

Q. And for the Company? A. Mr. Harris and myself.

Q. And now, will you tell us what was said at this meeting [79] and who said it, just as well as you can recall? A. Well, as was stated by Mr. Williams in the offset and I won't go into the details, but the meeting was opened with general discussion on the part of Mr. Harris covering a number of points that he felt would be of interest to the Union as information matters.

Then, Mr. Harris introduced the subject of the past pensioners medical insurance program, and he indicated to the Union that they had raised a question relative to the employer contribution that is being reduced in July, July 1, exactly. He stated that this was a contractual provision and that the Company intended to make that reduction at that time.

He then indicated that we'd been studying the possible effects of Medicare upon our past pensioners program of insurance, that I would review our thinking on the subject.

So then, I proceeded to review the matter by indicating a confirmation of the fact that they had raised this question and that we had been studying the effect of Medicare on our program of insurance. I pointed out that—again affirming that the matter of four dollars that was in effect as a contribution was subject to being reduced at July 1st to two dollars and it was our intent to make that reduction.

I next pursued the area of the past pensioners program of insurance by reminding the Union that the Memorandum [80] Agreement provided that this program of insurance was optional with the employee when he retired and that he could elect then to take this program of insurance by entirely paying the full premium of the cost of the insurance less those agreed-to reductions.

We mentioned four dollars which was in effect for certain of the past retirees and pointed out that the program could be as well dropped by him by virtue of not paying the premium.

Then, I covered the fact, as I recall it, that with the advent of Medicare that the program of insurance that the employee was carrying with the type of benefits now available in the Medicare would not be worth much to him. We thought that the pensioner had to take a look at the cost situation and the relative cost to him now would be particularly high in view of the fact that most of the benefits could or would be covered by Medicare.

I further indicated with respect to the non-duplication of the benefit provision that what this would do is contribute to what we consider a program that has lost most of its value. I then indicated that we had been studying the matter and then we'd come to a conclusion which we wanted to give our thinking on.

I next indicated that it was our plan to write to our pensioners and advised them of the effect of Medicare and to [81] indicate to them that we were planning to cancel our insurance program covering the Medicare or covering the medical phase. I intended then to include in such a letter, to tell the Union, a reminder to them of their need

to sign up for the Medicare phase of the Government program.

I further indicated that we would be willing to furnish to anyone of the past pensioners who discontinued his program of insurance an amount of three dollars per month towards the cost of his Medicare. I pointed out that this would have the effect of covering a number of employees who had no form of insurance with the Company and this would mean that they would be getting an amount of three dollars from the Company.

I pointed out, as I implied, to those who would have a benefit of a two-dollar contribution effective July 1st, that this would result in their obtaining an additional one dollar. I pointed out further that there were other groups too, groups who would be receiving no contribution from the Company who would benefit by an amount of three dollars, should they drop the program of insurance.

Thus, I pointed out we had the problem, as we saw it, with certain employees who were then retired but who were under age 65 and we then stated that we would be willing to provide that they could continue in the program of insurance they then carried until they became age 65, and that we would make [82] a three dollar contribution towards the cost of that program until they became age 65 and then that they, if they dropped the program, we would continue the three dollars in effect.

I felt that the question of a spouse had to be covered and we then covered that, the fact that we would be willing to provide that the spouse of an employee who was over 65 would be permitted to continue in the program of insurance, whichever one applied, by timely paying the premium cost for single coverage.

Q. There would be a spouse under 65? A. A spouse of under 65 to a retiree who was over 65.

Q. All right. A. The next question was the matter of the supplemental agreement that provided for the pensioners taking this program of insurance under the two-dollar arrangement.

We stated that we would be willing to amend that supplemental agreement to provide for future pensioners so that they would have one program of insurance available to them, that would be Medicare, and that we would be willing to provide the three-dollar contribution to them.

In that connection also, we made the offer to provide for a spouse who would be under 65 so that she could get or carry a fourteen-dollar a day coverage by timely paying for the premium for a single coverage.

This was the extent of my presentation. Mr. Williams [83] promptly indicated that the Union was not at all receptive to what the Company was planning to do. He pointed out that in his opinion he felt that we did have a legal right to do what we said we were going to do and then inquired of Mr. Harris of whether or not we would be willing to provide in some form a supplemental form of insurance.

Q. Did Mr. Williams indicate or say what kind of supplemental program? A. No, there was no definition or details concerning what he had in mind, other than a statement, would the Company be willing to furnish a supplemental program of insurance, and Mr. Harris responded that he felt this was a matter that was covered by the contract. Nevertheless, the Company was not willing to extend its approach to cover a supplemental program of insurance.

Mr. Williams then indicated that he would expect to take counsel with his attorney on the matter and asked us if we would, in effect, reduce our suggestions in writing, the proposals that we made during these discussions, and Mr. Harris indicated that he would consider outlining them in writing and asked Mr. Williams to give him the courtesy of a call after Mr. Williams had an opportunity of talking to his attorney, and this essentially was it.

Q. Mr. Rodgers, is a seniority list maintained for employees at the Barberton plant? [84] A. Yes, it is.

Q. What persons would be listed on that seniority list? A. Employees who are members of the bargaining unit or

actively at work, employees who are active employees who are on a leave of absence or employees who are considered off duty due to general illness or industrial injury.

They still have seniority rights and would be continued on the list.

Trial Examiner: Do you have to go into all of this? You're trying to show that retirees are not on the list, is that it? Why don't you ask him directly? I'm not interested in all this.

Mr. Curran: All right.

Trial Examiner: Is that your point, what you wanted to establish?

Mr. Curran: Yes.

Q. (By Mr. Curran) Are retirees maintained on the seniority list? A. No.

Q. On any supplemental thereto? A. No, sir.

Q. Do you know if retirees have any rights under the collective bargaining agreement between the Company and the Union? A. No, sir.

[85] Q. In the approximately thirteen years or so that you have been at this plant, have retirees had any rights under the collective bargaining agreements—— A. No, sir.

Q. —in effect between the Company and the Union? A. No, sir.

Trial Examiner: I didn't mean to butt in, you were doing it the right way. I know you're not supposed to be asking leading questions, but I didn't think it was harmful in this case. I knew what you were driving at, and it was the easiest way to get to the point instead of asking all these exclusions.

Q. (By Mr. Curran) When an employee quits his employment with the Company, is he maintained on the seniority list? A. No, sir.

Q. If he's discharged, is he maintained on the seniority list? A. No, sir.

Mr. Curran: Is this No. 4?

Mr. DuRose: Yes.

Mr. Curran: 4?

Mr. DuRose: No, it's 6.

Mr. Curran: 6?

Mr. DuRose: That's the contract.

Mr. Curran: The Pension Agreement?

[86] Mr. DuRose: That's 4, yes.

Mr. Curran: That's 4?

Mr. Riemer: Yes, General Counsel's 4.

Q. (By Mr. Curran) Mr. Rodgers, is a man who is an employee and has rights under the collective bargaining agreement, is such a person eligible to receive a pension? A. No, sir.

Mr. Riemer: May I have the question read, your Honor?

Trial Examiner: Read it back, Mr. Reporter.

(Question read.)

Q. (By Mr. Curran) Do you want to explain? A. Employees in the bargaining unit have to meet certain eligibility requirements. After having met certain eligibility requirements, they would become eligible under the Pension Agreement for a pension.

Q. But may such a person while he is still an employee receive a pension? A. No, sir.

Q. Is that provided for in this agreement? A. Yes, sir.

Q. Where? A. It's provided for in the Pension Agreement.

Q. I hand you the Pension Agreement, General Counsel's Exhibit 4, and ask if you can indicate the relevant provisions? A. Yes, sir.

[87] It's provided in Subsections (b) and (c) which define an employee at the Barberton plant and also under Section (c) where it defines a pensioner, which means a person who is retired under the terms of this Pension Agreement and who receives or is entitled to receive pension benefits.

Q. Mr. Rodgers, may a person who retires from employment with the Company from this collective bargaining unit at age 65, may he again work for the Company in a

position covered by that collective bargaining unit? A. No, sir, he may not.

Q. Is it provided for in any agreement? A. Our Pension Agreement.

Q. Under what provision? A. On page 2, there's a provision, the top of page 3 makes reference to it.

Q. What section of the agreement? A. This is Section 2 of part 1 of the Pension Agreement.

It starts at the bottom of page 2 and carries over to the top of page 3 and this provision provides for compulsory retirement for a pension for eligible employees who have attained their 65th anniversary of birth.

Q. Is there any language in there with respect to the retirement being mandatory? A. It states—yes, sir, it states: "On and after June 28, 1964 retirement upon a pension of an eligible employee who has [88] attained the 65th anniversary of his birth shall be mandatory."

Q. Under certain circumstances an employee may retire prior to age 65, is that not eorrect? A. That is correct.

Q. You do have an early retirement provision? A. We do.

Q. What is the provision in essence with respect to age and length of service? A. When an employee has attained his 60th birthday and having had 15 years of service, he can make application and retire on reduced pension.

Q. When an employee retires pursuant to that provision on a reduced pension, does the employee have the option to request and must he be granted the return to work in the bargaining unit if he so desires? A. He has no right to return to the bargaining unit, the Company would have option, sole option concerning his return.

Q. He cannot say simply, "I waive my pension, I want to go back to work? A. No, he cannot go, no.

Q. With respect to the disabled employees, do you have a Pension Agreement feature? A. Yes, we do have.

Q. You have disabled pensioners younger than 65? A. Yes, sir.

[89] Q. If a former employee goes on disability pension and recovers from a disability, does he have a contractual

right to demand re-employment in the bargaining unit? A. He does not.

Q. He may request it as any other potential employee? A. He may request it, but it's the sole option of the Company.

Q. Has the Company ever re-employed, to your knowledge, a person who is receiving a normal retiring pension? A. No, we have not.

Q. Has the Company ever re-employed a man—and in each case I mean in the bargaining unit—a man who retired from the bargaining unit on an early retirement pension? A. We have not.

Q. Has the Company ever re-employed in the bargaining unit a man who retired from the bargaining unit on a disability pension? A. No, sir, we have not.

Q. Mr. Rodgers, I note in General Counsel's Exhibit 4 that there are provisions there, in the Pension Agreement, for employees who are covered by the collective bargaining unit to accumulate continuous service. You're familiar with those provisions? A. Yes, sir.

Q. And in general, they provide that the employee would [90] accumulate credit of continuous service by working in the bargaining unit, is that correct? A. Yes, sir.

Q. And when an employee retires, does he accumulate his continuous service pursuant to the terms of the agreement, the Pension Agreement? A. No, he does not.

Q. In fact, directing your attention to Page 19 of General Counsel's Exhibit 4, part 1, Section 2—Section 3, rather, Paragraph (2), which starts: "Continuous service——"

Mr. Riemer: What page?

Mr. Curran: Page 19. At the bottom, the last two lines at the bottom, "Continuous service shall be broken . . ."

Reading to the end of that sentence, Mr. Rodgers, when an employee retires, I believe you testified that his continuous service is broken—— A. That is correct.

Q. When an employee retires under or pursuant to the agreement, does he cease to be an employee, under the labor agreement? A. Yes, he does.

Q. Then, he becomes what, under the Pension Agreement? A. A retired employee as defined in the Pension Agreement.

Q. Or a pensioner? A. A pensioner, that's another term. [91] Q. Mr. Rodgers, does the Company maintain the addresses of the pensioners? A. Yes, it does.

Q. I wonder, Mr. Rodgers, where do the people who have retired on pension pursuant to the various agreements from 1950 to present, do you know where they reside? A. Well, they reside all over Ohio and there's a number that still reside in Barberton, I guess some six to eight states, as well as some in Yugoslavia today.

I guess they're all over the place.

Q. Mr. Rodgers, as a result of the plan which went into effect—well, which was announced by letter to the employees on March 23, 1966—— A. March 24th.

Q. —24th, 1966, and which is in evidence, some five different letters as General Counsel's Exhibit 7, did an employee, a pensioner have the right to decline to participate in this new, in a sense new, program and continue to participate in the one he had just been in? A. Oh, yes, absolutely.

Q. As a result of the institution of that program, is it correct that certain employees who were not contractually entitled to receive net payment, say, toward the cost of their medical insurance or Medicare, did, in fact, receive some three dollars a month for the cost of that? [92] A. There was—they would be receiving three dollars.

Q. In fact, every employee who retired since 1962 was not entitled to any contribution from the Company toward his medical insurance? A. That is correct, none of those people were entitled to any contribution from the Company.

Q. And those who retired after 1962, would be, after July 1—— A. Yes.

Q. —entitled to two dollars a month—— A. That is correct.

Q. Mr. Rodgers, did the Company ever offer this program of March 24, 1966, or did it on or about March 24,

1966 offer that plan with respect to the future retirees? A. No, sir, we did not.

Q. Or was it just made available to those who had already retired? A. That is correct.

Q. Has anyone retired since March 24, 1966? A. Yes, sir.

Q. Is this program available to them? A. No, sir, it is not.

Q. So that on March 24, 1966, it was not announced as an available program to people who were then working in the collective bargaining unit? A. No, sir, it was not.

[93] Q. I believe it was testified by Mr. Williams you had some series of meetings with the Union in what, late summer or early fall, 1966—— A. Yes, sir.

Q. —with respect to grievance matters and ultimately with respect to the contract extension? A. Yes, sir.

Q. Do you recall such a meeting? A. Yes, sir.

Q. Was there any proposal made to the Union at that time with respect to some sort of medical insurance program with respect to the retired employees? A. Yes, we made a proposal to provide a program of insurance which would provide for a three-dollar contribution for those that retired after the signing of that extension agreement.

Q. What was the Union's response to this proposal? A. The Union rejected our proposal.

Q. Did they make any counter proposal themselves? A. No, they did not.

Q. Between March 24, 1966 and October 11, 1966, did you receive any request from the Union to bargain with respect to medical insurance program for retired employees? A. No, sir.

Trial Examiner: I think that's admitted as a result of this question I asked of Mr. Williams on the stand.

[94] Mr. Curran: General Counsel alleges a continuing refusal to bargain——

Trial Examiner: I understand that, I pinned him down, I wanted to narrow the issue.

I asked: Was it your contention that the Union made an offer which the Employer rejected? He said they made no proposals. So that is not an issue in the case.

Q. (By Mr. Curran) Mr. Rodgers, at any time after March 24, 1966, did any representatives of the Union request that the Company return to what we might call the pre-March 24 status quo with respect to medical insurance for retired employees? A. No, sir.

Mr. Curran: I have no further questions.

Trial Examiner: All right. I think we'll take a ten-minute recess. Let's go off the record.

(Recess had.)

Trial Examiner: On the record.

Cross Examination

Q. (By Mr. DuRose) Mr. Rodgers, you testified concerning a Memorandum Agreement which was signed in 1962 and which was introduced into evidence as Respondent's Exhibit No. 2, I believe? A. That's correct.

Trial Examiner: No, Respondent's Exhibit 2 is the Decision and Direction of Election.

[95] Mr. DuRose: Oh, here it is, Respondent's Exhibit No. 5.

The Witness: Dated July 29, that's correct.

Q. (By Mr. DuRose) Was that agreement signed on July 29? A. Yes, sir.

Q. It affected people who retired after June 27, 1962? A. Yes, sir, the date of June 27, 1962.

Q. And thereafter? A. That is correct, mm-hmm.

Q. Now, you stated earlier that you were the person at the March 21st meeting who explained what the Company's position would be concerning medical insurance for retirees and you mentioned something concerning the non-duplication feature of the Company's plan.

Would you explain it to me, please?

A. Yes, sir.

We indicated to the Union during those discussions that we felt the value of the present plan that they operated would be lessened by the benefits provided by the Medicare program and the fact that the Company's program of insurance included a non-duplication of the benefits.

Q. Are you familiar with the language of that provision? A. I know it's contained in the certificate of insurance, mm-hmm.

Q. Do you know what the wording is? A. I couldn't quote it verbatim.

[96] Q. Does it say that the plan will not duplicate payments made under other insurance plans by other employers? A. By other group employers to which the Company, I believe makes contributions.

Q. Was there something said at that time that the Company considered the Medicare plan to be an insurance plan of another employer? A. It's our opinion that this would apply, that's correct.

Q. Was that communicated to the Union? A. Yes, sir, in our opinion, yes.

Trial Examiner: My notes show that Mr. Williams testified that it was communicated to him.

The Witness: Yes, sir, that's right.

Trial Examiner: I'm not saying that I'm ruling it is or is not a duplicate feature, but Mr. Williams testified that he was told that at the meeting.

I don't think that's a matter in dispute.

The Witness: Yes, sir.

Q. (By Mr. DuRose) I believe you were asked to direct examination whether or not any of the collective bargaining agreements that the Company had with the Union had any provisions concerning pensioners. You answered that they did not.

Is that correct?

A. The collective bargaining agreement, that is correct.

[97] Q. When you talked of the collective bargaining agreement, I assume you mean the document entitled Collective Bargaining Agreement—— A. Yes, sir, dated October 20, 1964, entitled——

Q. But there are other agreements that the Company has with the Union? A. The Pension Agreement.

Q. And the Memorandum Agreement? A. Yes, sir, we have certain memorandum agreements with the Union, yes, sir.

Q. Now, when you announced the Company's proposals at the March 21 meeting, did you tell them when that was going to go into effect? A. No, we didn't specify a date at that time.

Q. Now, as far as the insurance which the Company has with the insurance carrier, how is the premium on that policy determined? A. The policy is determined by the insurance carrier.

Mr. Curran: I object.

Trial Examiner: I'll sustain the objection.

Mr. Curran: I object.

Trial Examiner: I've sustained the objection. That's not an issue in the case.

Q. (By Mr. DuRose) Now, at the March 21 meeting, was anything said concerning any agreements that the Company had [98] with respect to the Glassworkers Union? A. No, not to my recollection, no, sir, not at that meeting.

Q. At the March 21 meeting, did the Company take the position that it did not have to bargain with the Union concerning this cancellation of the insurance? A. I don't think, I don't believe we took that position at this meeting with them.

Q. Did you ever take that position? A. We told them what our plans were in terms of the rights to the retired employees as previously stated in my testimony.

Mr. DuRose: Nothing further.

Cross Examination

Q. (By Mr. Riemer) Mr. Rodgers, how many retirees of the Barberton bargaining unit are there as of March 1966? A. As of March '66, roughly speaking, give or take, about a 190.

Trial Examiner: That's remarkably close correspondence to Mr. Williams' estimate who thought it was 200.

Q. (By Mr. Riemer) When an employee goes on retirement and is eligible under the pension program for retirement having served the prerequisite number of years and having reached the age and being otherwise qualified,

does the Company notify the Union of his retirement? A. Yes, the Union receives a weekly notice of employees who [99] are separated from the bargaining unit for various reasons.

Q. Including—— A. Including retirements, yes, sir.

Q. Do you furnish the Union a copy of the employee's application for a pension? A. No, we do not, to my knowledge. No, to my knowledge, it's never been given to the Union as a standard procedure.

Trial Examiner: Is there any contention that this failure to give that is an unfair labor practice?

Mr. Riemer: No, no.

Trial Examiner: If so, I don't see that as a point.

Mr. Riemer: No, I just think, well, I take it——

Trial Examiner: I just didn't quite understand your question, Mr. Riemer.

Mr. Riemer: The purpose of the question is to show—well, we'll pass along.

Q. (By Mr. Riemer) Now, in 1960, Mr. Rodgers, the Company did bargain with the Union concerning pension rights of employees, did it not? A. We had negotiations for an extension agreement in 1960 which covered the Pension Agreement—the labor agreement——

Q. And your understanding with respect to pensions are customarily or procedurally incorporated in a separate document such as General Counsel's Exhibit 4 in evidence? A. That is correct.

[100] Q. You do not contend that you do not bargain with the Union about pensions, do you? A. About pensions?

Q. Yes. A. No, sir, I do not.

Q. Now, prior to March or let's say, March 15, 1966, to pick a date, prior to any change, what were the plans then in effect covering retired employees? A. What were the plans covering all retired employees?

Q. Within the bargaining unit. A. Well, I think I'll have to clarify that question.

When you state "Retired employees within the bargaining units," retired employees are not within the bargaining unit.

Q. I meant retired employees from the bargaining unit, those who had been and now are—— A. I think I can recite that. There were a group of retired employees who retired sometime prior to 1949 who had no program of medical insurance. There were another group of employees, retirees, retired in '49, the specific date I can't quote exactly, up through the period of January 1, 1960, who had a ten-dollar a day program as we have commonly referred to it to which the Company made no contributions.

Then, we had a group of employees retired under the January 6, 1966 agreement to provide fourteen-dollar a day plan as commonly described in my previous testimony and these [101] employees had an election to take that plan, to take that plan on retirement. They could opt to continue it by timely paying the applicable premium rate in effect at the time and thereafter.

The next group of retirees would be those who retired under an agreement we arrived at dated July 29, 1962, and we stated those employees who retired as of or after November 1st, 1962, with the same program of a fourteen-dollar a day plan available to them provided they elected to carry that plan. If they carried it and timely paid the full premiums, the Company would contribute two dollars monthly toward the cost of that program of insurance and the two dollars would only be applicable to the program of insurance.

We then had a revision in 1964 as is on the record of a four-dollar contribution.

Q. Oh, well, at the meeting on March 21, 1966, when you were in conference with the Union Committee, neither you nor Mr. Harris stated at that time that you were going to send a letter to these various groups of retired employees explaining what the Company intended to do with respect to Medicare and their insurance coverage, did you? A. Yes, sir, I stated previously in my testimony on that point, on that date we had been studying the program of insurance and the effect of Medicare and we'd like to discuss with them the conclusions that we had drawn and that we said

[102] it was our plan then to write to our employees at that time and advise them, urging them to sign up for Medicare, and that we intended to just discontinue the then existing program of insurance and then I followed my testimony with respect to the various facets of our offer.

Q. Was this the first time that the Union was notified that you intended—withdraw that. Let me rephrase that question.

Was this the first time that the Union was notified that the Company planned to cancel insurance for retirees? A. Yes, this is the first mention of it.

Q. Before Medicare went into effect, again thinking in terms of March 1966—— A. Mm-hmm.

Q. —was there any front end deductible, so to speak, on the insurance program then provided for retirees? A. No, there was no front end deductible in that plan.

Q. Well, then, will you tell us when it became effective and what it covered?

Trial Examiner: Are the terms of these various plans in issue here? I see why you want to introduce evidence that there were plans but now you're talking about the premiums and so forth.

Go ahead. I hate to go into the collateral issues, but go ahead. There's no objection to the question.

Answer the question, Mr. Witness.

[103] A. Well, I can only answer to this extent, applied to the bargaining unit. We had negotiations with the Union in 1964 which removed the front end deductible of the insurance. The fourteen dollar a day plan had made other provisions but this was applicable to that—the fourteen dollar a day plan was not involved, we're talking about the semi-private plan that the employee had.

Q. You know, Mr. Rodgers, do you not, at this meeting on March 21, Mr. Williams or some member of the Union Committee asked if any provision would be made by the Company for those benefits not covered by Medicare once it became effective? A. I think Mr. Campbell was the only one that made this comment, is my recollection. I think he

made a simple statement, it was intended that the program of insurance would cover the deductible items under Medicare. We indicated that this would probably be covered considering that they were not covered by the Medicare. Then the Company plan would take up, if they had that plan.

Q. That was Mr. James Campbell? A. As I recall, yes, sir.

Q. The mandatory retirement of employees at age 65 was an item that was negotiated by the Company in the last contract? A. No, sir, my recollection is that it was negotiated in 1962.

Q. '62? At least, it was negotiated with the Union? [104] A. Yes, sir.

Q. How many of the retirees of this group of a 190 have cancelled the insurance made available to them by your carrier, Equitable? A. I recollect the answer Mr. Williams gave still prevails, about 15.

Q. Were the letters which are attached to General Counsel's Exhibit 7, letters dated March 24, 1966—— A. I'm familiar with them, yes.

Q. —shown to the Union Committee on March 21? A. No, sir, they were not.

Mr. Riemer: I have nothing further.

Redirect Examination

Q. (By Mr. Curran) Were they in existence on March 21? A. No, sir, they were not.

Mr. Riemer: I beg your pardon, yes, I do. May I?

Trial Examiner: Go ahead.

Cross Examination (Continued)

Q. (By Mr. Riemer) Was the decision of cancellation such as you have described it announced on March 21 a Barberton decision or was it a Pittsburgh decision relayed to Barberton for execution here? A. This was a management decision. Mr. Harris has responsibility.

Q. If it's a management decision, from whence did the [105] management decision emanate? A. If you describe your term "emanate."

Q. Where did it come from, Pittsburgh or Barberton? A. Barberton.

Q. The local management then at Barberton was responsible for the promulgation of this plan? A. The Industrial Relations Department, and in my advisory capacity reviewing this, with recommendations to the plant management, and the plant management has the decision to make.

Q. I thought I understood you to say sometime in November 1965, Mr. Rodgers, that this question had been referred to the Pitssburgh Plate Glass or your headquarters in Pittsburgh? A. That was Mr. Williams' testimony, not mine.

Q. You didn't so testify? A. No, sir.

Q. Perhaps I misunderstood.

Trial Examiner: I think that Mr. Williams so testified, my notes show.

Mr. Riemer: I think my notes show that Mr. Rodgers did too.

Trial Examiner: You keep better notes than I do, Mr. Riemer.

The Witness: I think my statement was that we would take a look at it and discuss the matter with our Industrial Relations Department and our Insurance Department. That was [106] in connection to what we would do afterwards.

Q. (By Mr. Riemer) Did you take this question up with the Industrial Relations Department in Pittsburgh and also the Equitable Life Insurance Company? A. Yes, sir, this was reviewed with them.

Q. Was the Barberton announcement or pronouncement of March 21, 1966 reached after consultation with Pittsburgh and Equitable? A. There were numerous discussions with the Company officials and the insurance carrier concerning this problem.

Mr. Riemer: I have nothing further.

Trial Examiner: You may step down.

Mr. Curran: Oh——

Trial Examiner: Let's not have re, re, re, redirect and re, re, re, redirect. I'm going to cut off the examination of the witness with your questions, Mr. Curran, unless they're serious ones and then we'll give them re, re, redirect.

Go ahead.

Mr. Riemer: This is redirect.

Mr. Curran: As a result of Mr. Riemer's questioning.

Redirect Examination

Q. (By Mr. Curran) Did you ever receive a proposed program from the Equitable Life Insurance Company as a supplement to Medicare prior to March 24, 1966?

Mr. DuRose: Objection.

[107] Trial Examiner: Sustained.

Mr. Curran: I think I have a right to——

Trial Examiner: He brought up the question, they were inadmissible but weren't objected to. I'm not going to go into matters just because they were in. Now that there is an objection, I'm going to sustain it.

Mr. Curran: No further questions.

Trial Examiner: All right. You may step down. I was premature the last time.

The Witness: That's right.

Trial Examiner: I guess it was.

(Witness excused.)

**William R. Harris**

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

Trial Examiner: Give your name and address to the Reporter.

The Witness: W. R. Harris, The Pittsburgh Plate Glass Company, Chemical Division, Barberton, Ohio.

Direct Examination

Q. (By Mr. Curran) What is your home address? A. My home address is 106 Schocalog Road.

Trial Examiner: I might say that the facts are substantially in agreement. There is very little dispute so [108] that you may not go into the cumulative matters. I don't mean or I'm not saying that you can't do——

Mr. Curran: The witness will not be questioned as to the meeting of March 21, 1966, but solely as to the Company's version of the telephone conversation on March 23, 1966, in deference to the Trial Examiner.

Q. (By Mr. Curran) Will you state your position? A. Works Manager.

Q. Barberton plant? A. Barberton plant.

Q. How long have you held that position, Mr. Harris? A. About four years.

Q. And how long have you held positions with the Company at the Barberton plant? A. 23 years.

Q. Mr. Harris, directing your attention to March 23, 1966, did you have a telephone conversation with Mr. Williams on or about that time? A. Yes, I called Mr. Williams. It was in the afternoon, I don't recall the exact time.

Q. Where did you call him? A. When?

Q. Where was Mr. Williams when you called him? A. He was at the Union Hall.

Q. He answered your call, did he? [109] A. Yes.

Q. You recognized his voice? A. Yes.

Q. Can you tell us what was said in the conversation and who said it? A. Well, I advised Bill after some greetings that we had reviewed our position in relation to their comments on what we had indicated we were going to do in the meeting on March 21 and in taking these comments that they had made into consideration, we had revised the position that we were taking with the pensioners and that we would be writing them individually indicating that the plan of medical insurance that they had retired under would be available to them voluntarily if they paid the premium.

That if they did not take this company policy or dropped the company policy, that we would pay them three dollars.

I covered the spouse under 65, that we would have the same single plan available for her if they decided to carry it, and disabled retirees under 65.

I covered the non-duplication provision.

Then, I indicated to him that we were concerned about the March 31st date approaching and that we had written our pensioners around the 1st of March sending them a booklet on Medicare and that we were concerned that we should get some communication out to them prior to March 31st so that they [110] would sign up for the benefits to this program.

He asked me if he could have—if I would give a copy of those letters to the Union. I said, "Yes, we would send them over."

In substance, this is about the conversation.

Q. Did Mr. Williams—well, you were at the meeting of March 21st, of course? A. Yes.

Q. At that meeting I think you indicated—the Union indicated its opposition to the program the Company proposed on the 21st? A. Yes.

Q. Did Mr. Williams say anything to you in your telephone conversation on March 23 which indicated opposition or whether he favored or opposed the program that you were describing to him? A. I do not recall him indicating this, one way or another.

Q. Did he say anything to you that this was a bargainable issue in that conversation? A. March 24?

Q. 23rd. A. Or 23rd, not that I recall.

Q. After the March 21st meeting, did Mr. Williams contact you with respect to any conversation that he had with respect to his attorney? [111] A. With respect to any conversation that he had with his attorney, no.

Mr. Curran: That's all.

Cross Examination

Q. (By Mr. DuRose) You said in your direct testimony, in your conversation with Mr. Williams on March 23, that

you had covered the non-contributory aspect of the plan, is that correct? A. Non-duplication.

Q. Non-duplication? A. This was a question that Bill asked me, would the non-duplication provision be applied the same that it is in our employees insurance, the same way we apply it. My answer to that was, "Yes, we would apply it the same way."

Q. What this meant was that your plan would not cover any payments made by Medicare, is that right? A. This is right.

Mr. DuRose: No further questions.

Cross Examination

Q. (By Mr. Riemer) Excuse me, Mr. Harris, but this conversation, telephone conversation, that you had with Mr. Williams on March 23rd, it took place in the afternoon, did it not? A. My recollection was that it was in the afternoon.

Q. You search your recollection, please, and tell us whether [112] you can recall saying to Mr. Williams in substance or in effect that it was the position of the Company that once a man retired, the Union no longer had any right to bargain for him? A. I have said this on occasion to Mr. Williams, I don't know what the occasion might have been.

Q. Did you say it on March 23 in this conversation about insurance? A. I do not recall having said this.

Q. Did you call Mr. Williams or did he call you on that day? A. I called him.

Q. And you called him for the purpose of telling him that you reviewed the discussion which had occurred previously on March 21? A. That's right.

Q. Do you recall saying that? This was after you had told Mr. Williams what you intended to do or what the Company intended to do, that you were not going to bargain with the Union about it? A. No.

Q. You did not say that? A. I don't recall saying that.

Q. Does this mean you might have said it? A. Well, on March 21st, Mr. Williams—I did say to him that we were

not going to institute a supplemental plan of [113] insurance and that we were not going to bargain on it.

Q. And you also said that you were going to cancel—— A. On March 21st?

Q. —your insurance program? A. Yes.

Q. Have you any recollection in the conversation with Mr. Williams on March 23rd of saying in words or substance to the effect that since the Pittsburgh Plate Glass contributed to the Social Security Administration—or System, rather, it considered this as a contribution to another insurance plan or program? A. I recall this discussion but my recollection is this took place on March 21st in the discussion on the non-duplication.

Q. Well, what was that discussion?

Trial Examiner: He testified to that.

Mr. Riemer: What was it?

Trial Examiner: He didn't testify to anything on 21.

Mr. Riemer: That's right.

Trial Examiner: Your examination must be limited to what was on direct.

Mr. Curran: I object.

Mr. Riemer: You're limiting the examination——

Trial Examiner: Yes.

Mr. Riemer: The only thing, your Honor, is that——

Trial Examiner: Otherwise, the witnesses have testified [114] that the Employer did say it. Now, the particular day is unimportant to me. The record is clear that the Employer has taken the position at sometime that this was not a bargainable matter.

Is that what you're trying to establish?

Mr. Riemer: I have no further questions.

Mr. Curran: I have no questions.

Trial Examiner: All right, you may step down, Mr. Harris.

(Witness excused.)

Mr. Curran: Respondent rests.

Trial Examiner: Is there any rebuttal?

Mr. DuRose: No.

Trial Examiner: Not from the General Counsel. How about Mr. Riemer?

Mr. Riemer: What is that, sir?

Trial Examiner: Do you have any rebuttal?

Mr. Riemer: (shaking head negatively.)

Trial Examiner: Apparently, then, there isn't any.

Mr. Curran: I would like to make a motion.

Trial Examiner: All right.

Mr. Curran: I move to dismiss the Complaint paragraphs 9, 10, 12, 13, 14, 15, and 16, for the reason that it does not allege that the Respondent has taken any unilateral action with respect to the employees in the unit appropriate [115] for the purposes of collective bargaining as that unit is set forth in Paragraph 5 of the Complaint since:

One, the language of Paragraph 5 does not include retired employees;

Two, the Union was not certified for a unit which included retired employees;

Three, the Union and Respondent have contractually agreed in the Pension Agreement that the retired employees are no longer employees under the Labor Agreement;

And, finally, four, that the Board and the Court have previously determined that retired employees with no reasonable expectation of employment are not employees within the meaning of Section 2, Subsection 3 of the Act and accordingly there is no duty to bargain with reference to the wages and hours and working conditions of those employees.

Further, I move to dismiss the Complaint paragraphs 10, 11, 12, 13, 14, and 15, 16, for the reason that the Complaint does not allege that the Respondent has taken any unilateral action with reference to the employees in the unit described in Paragraph 5 of the Complaint.

General Counsel has in its Complaint clearly recognized that retired employees are not included in the unit in Paragraph 6(b), 7, 8, 9, 10, 11, and 12, he has recognized

that the retired employees are not set forth in the unit set [116] forth in Paragraph 5 which is described——

Trial Examiner: I think he may have made a prima-facie case, I'll deny your motion.

I'll still have to examine your law to see if your position is well taken in your motion. If it is, I'll grant it. As of now, I don't believe I can grant your motion. As a matter of law this is only——

Mr. Curran: I don't know, if there is an allegation that retired employees are included in the unit set forth in Paragraph 5——

Trial Examiner: It may be that your point is well taken. As of now, I'm going to deny your motion.

* * * * * * * * * * *

No. 19875

# UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

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| PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION, *Petitioner*, v. NATIONAL LABOR RELATIONS BOARD, *Respondent*. | ON PETITION to Review and Cross-Application to Enforce an Order of the National Labor Relations Board. |

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Decided and Filed June 10, 1970.

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Before: WEICK, CELEBREZZE, and BROOKS, Circuit Judges.

CELEBREZZE, Circuit Judge. This cause is before the Court on the petition of the Pittsburgh Plate Glass Company, Chemical Division, [hereinafter "the Company"] to review, and upon the National Labor Relations Board's cross-application to enforce a Labor Board order[1] requiring the Company to cease and desist from refusing to bargain collectively with the Union about changing health insurance benefits for previously retired employees, who prior to their retirement, had been actively working for the Company in the collective bargaining unit represented by the Union, and who, upon their retirement, became covered by a Union-negotiated retirement benefit plan. The Board found that by proposing improvements in their retirement health plans to retirees individually, rather than bargaining such alterations collectively

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[1] The Board's Decision and Order are reported at 177 NLRB No. 114 (1969).

with the Union, the Company "unilaterally modified" the retirement benefits in violation of Section 8(a)(5) and (1) of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. § 158(a)(5) & (1) (1964). Local Union No. 1, Allied Chemical and Alkalai Workers of America ["the Union"], which filed the charges initiating these proceedings, has intervened herein, and several other interested parties have filed briefs *amici curiae*.[2] This Court has jurisdiction under Section 10(e) and (f) of the Act.

The facts, which are essentially undisputed, raise a question of first impression, so far as we are able to determine, before this or any other Court under the National Labor Relations Act, as amended.

## I.

Since 1949, the Union has been the exclusive bargaining representative for Company employees in a unit composed of:

> "All employees of the Employer's plant and limestone mine at Barberton, Ohio working on hourly rates, including group leaders who work on hourly rates of pay, but excluding salaried employees and supervisors within the meaning of the Act."

In 1950, the Union and the Company negotiated provisions for an employee group health insurance plan. An oral agreement was made that retired employees could also participate in the plan by paying a stipulated premium, which would be deducted from their pension benefits. The Company made no contribution toward retired employees' health insurance

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[2] Briefs urging enforcement of the Board's order were filed by the American Federation of Labor and Congress of Industrial Organizations; the Amalgamated Transit Union, AFL-CIO; the International Union, UAW; and the United Steelworkers of America, AFL-CIO. Briefs urging that the Board's order be set aside were filed by the Union Carbide Corporation; the National Association of Manufacturers of the United States of America; and the Chamber of Commerce of the United States of America.

premiums under this program. Except for an improvement unilaterally instituted by the Company in 1954, and another improvement negotiated in 1959, this program remained unchanged in all relevant respects until 1962.

In 1962, the parties entered into a memorandum agreement by which the Company agreed to contribute $2.00 per month toward the cost of the monthly premium for medical benefits, but only for persons who retired from the Company's employ after June 27, 1962. Persons already retired prior to that date received no such contribution. In these negotiations the parties also agreed to make age 65 the mandatory retirement age.

During negotiations for a new labor contract in 1964, the parties again bargained about insurance benefits for retired employees. The Company agreed to increase its contribution to medical benefits for persons retired after June 27, 1962 from $2.00 per month to $4.00 per month. However, anticipating the enactment of Medicare legislation, the agreement provided that if a government health program were enacted, the Company could reduce its contribution by the amount of the 1964 increase, *i.e.*, $2.00 per month.

On November 23, 1965, following the enactment of Medicare and during the term of their outstanding collective bargaining agreement, the Union asked the Company to engage in mid-term bargaining for the purpose of re-negotiating insurance benefits for retired employees of a type not available under Medicare. The Company took the Union's request under advisement and responded at a meeting held on March 21, 1966. First, the Company announced its intention to reclaim its contribution of the extra $2.00 per month beginning July 1, 1966, the effective date of Medicare. The Company's right to do this under the 1964 contract is not in dispute. Second, the Company said it intended to cancel the negotiated health insurance plan for retired employees because, in its opinion, the enactment of Medicare made this insurance useless, and to substitute therefor a $3.00 monthly contribution

for supplemental Medicare benefits for each employee who retired after July 27, 1962. Third, the Company rejected the Union's request to bargain for a supplemental insurance plan, and challenged the Union's right to bargain for retired employees at all.

The Union conceded the Company's contract right to reduce its contribution, but challenged the Company's right to unilaterally substitute supplemental Medicare for the negotiated health program.

Two days later, on March 23, 1966, the Company told the Union that, having reconsidered its position, the Company would not unilaterally substitute Medicare for the negotiated health insurance. Instead, the Company said it intended to mail letters to retired employees announcing that they could choose to withdraw individually from the negotiated health insurance plan and, in lieu thereof, the Company would contribute $3.00 per month towards supplemental Medicare premiums.

The Union objected to this proposed action, asserting the right to bargain about any change in the contract affecting the health insurance plan. Nevertheless, the Company refused to bargain with the Union, and, on March 24, 1966, mailed the aforementioned letters to retired employees with the result that 15 out of 190 retirees elected the $3.00 contribution to Medicare instead of the negotiated $2.00 contribution to the private health insurance program.[3] In response to the Company's action, the Union filed the instant charges.

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[3] That letter, which forms the basis of this controversy, provided:

Dear Pensioner:

The matter of your Hospital-Medical Insurance is of the utmost importance to you; therefore, we recommend that you read this letter carefully.

The program of Hospital and Medical benefits under the Federal Social Security Act, known as Medicare, will become effective on July 1, 1966. Any person who has attained age 65, whether they ever worked and were covered by Social Security or not will be eligible to receive benefits under this program.

The Board's Trial Examiner conducted hearings into the complaint, found the foregoing to be the facts, and concluded that pensioners and retirees are not employees as defined by Section 2(3) of the Act, are not employees within the meaning of Section 8(a)(5), and are not within the bargaining unit; that a Company has no statutory duty to re-negotiate benefits for previously retired employees; that the letter from the Company to the retirees did not constitute a "unilateral change" of any provisions of the negotiated contract or a mid-term change within the intendment of section 8(d). He did not find that the Company's action had the purpose or effect of undermining employees' section 7 rights. Finding violations of neither section 8(a)(5) nor section 8(a)(1), the Examiner recommended dismissal of the complaint.

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*Hospital Benefits* under Medicare will be received automatically by any person 65 years of age or over; no enrollment or payment of premiums is required. However, *Medical Benefits* are voluntary and do require enrollment and the payment of a premium of $3.00 a month per person. Enrollment for Medical Benefits must be completed by March 31, 1966, otherwise, enrollment will be delayed to a future date and benefits will be lost.

You are urged to enroll for the Medical benefits available to you as soon as you become eligible since at present you are under 65 years of age. If you have any questions concerning the program, contact your nearest Social Security office when appropriate to do so.

As a pensioner who at present is under age 65, you have been enrolled in a program of Hospitalization-Medical Insurance, as furnished by the Equitable Life Assurance Society, your participation in this program of Insurance for either single coverage or for coverage for you and your spouse has been a voluntary election on your part, and enrollment has been conditioned on your timely payment of the full monthly premium for the type coverage you elected to carry.

It is necessary to inform you at this time, that in your case, the program of Insurance provides that the current Company monthly contribution of $4.00 will be reduced to a $2.00 monthly contribution when Social Security Hospital-Medical benefits program goes into effect in July 1966. This is in accordance with prior arrangements on this matter. However, this reduction will not take place until the month following the month in which you become age 65 or are eligible for Social Security Hospital-Medical benefits.

Should you elect to continue your present coverage *after you become age 65* and are eligible for the Social Security Hospital-

The Board adopted the Examiner's findings of fact, but disagreed with his construction of the Act. The Board held: that retired employees are "employees" within the meaning of the statute for the purposes of bargaining about changes in their retirement benefits; that, in the alternative, renegotiating retirement benefits for retirees is within the contemplation of the statute because it "vitally affects active bargaining unit employees"; that the Company had "unilateral-

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Medical Program, the same benefits as outlined in the Certificate of Insurance will continue. We must remind you, however, in considering continuance of your present program of Hospitalization and Medical Insurance that, with respect to this plan there will be no duplication of benefits that are also paid for under the Medicare program.

The Company would like also to inform you that upon your reaching age 65, should you elect to voluntarily discontinue your enrollment in the present Hospitalization Medical program of insurance then your monthly premiums would no longer be deducted from your pension check, and the full amount will be available to you following your withdrawal from the plan.

In the event you do elect to discontinue your present enrollment, after you reach age 65, the Company will then make a contribution of three dollars ($3.00) per month to you, which amount would cover the current individual cost to you for your Social Security enrollment.

If after you reach age 65 and elect to discontinue your present enrollment, but your spouse is under age 65, and not yet eligible for the Social Security Hospital-Medical program you may elect to continue her in the present program of Insurance as currently furnished by the Equitable Life Assurance Society, until she reaches age 65 or becomes eligible for the Social Security Hospital-Medical Program. In order to enroll her in this manner you must notify the Company and timely pay the full cost of the premium for single coverage for your spouse. The initial cost of this coverage will be $5.71 per month effective July 1, 1966.

If you have any questions concerning this matter, you may contact Mr. Frank Ruehling in the Insurance Department at the Barberton Plant.

Yours very truly,

W. R. Harris

W. R. Harris

The above-quoted letter was mailed to retirees under age 65 carrying insurance to which the Company made a contribution. Other letters, explaining retirees' rights under Medicare, the negotiated retirement health plans, and the proposed supplemental Medicare contributions, were mailed to: retirees having no insurance coverage; retirees carrying plans of insurance to which the Company made no contribution; retirees carrying insurance to which the Company contributed; and retirees under age 65 carrying insurance to which the Company made no contribution.

ly changed" retirees' health benefits in violation of Section 8(a)(1) and (5) of the Act.[4] Accordingly, the Board ordered the Company to cease and desist from refusing to bargain collectively with the Union about adjustments in health insurance plans for retired employees, and otherwise "interfering with, restraining, or coercing employees in the exercise of" their section 7 rights. In addition, the Board ordered the Company to rescind any "unilaterally instituted" adjustment in retirees' health benefits upon request of the Union.

The sole issue in this case is whether an employer may bargain individually with retired employees about alterations in their negotiated retirement benefits, or whether alterations in retirees' retirement benefits are mandatory subjects of bargaining with respect to which an employer must bargain collectively at the request of the Union.

The Labor-Management Relations Act enjoins employers to bargain collectively[5] and in good faith with the bargaining agents of their employees[6] about "wages, hours, and other terms and conditions of employment."[7] It is well established,

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[4] Board Member Zagoria dissented from the Board's Decision and Order.

[5] Section 8(a)(5), Labor-Management Relations Act, 29 U.S.C. § 158(a)(5) (1964) provides:

> "(a) It shall be an unfair labor practice for an employer —
>
> * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."

[6] Section 9(a), Labor-Management Relations Act, 29 U.S.C. § 159(a) (1964) provides the statutory method for selection of a bargaining agent:

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . . ."

[7] Section 8(d), Labor-Management Relations Act, 29 U.S.C. § 158(d) (1964) defines the collective bargaining obligation as:

> "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable time and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . ."

and not in dispute here, that pensions and insurance benefits to be enjoyed by employees after retirement are "wages" for the purposes of the statute, albeit deferred ones, and that insofar as they accompany a provision specifying a mandatory retirement age, as is present in this case, they are also "conditions of employment." *W. W. Cross & Company*, 77 NLRB 1162 (1948), enf'd, *W. W. Cross & Company* v. *NLRB*, 174 F.2d 875 (1st Cir. 1949); *Inland Steel Company*, 77 NLRB 1 (1948), *enf'd, Inland Steel Company* v. *NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied on this issue*, 336 U.S. 960; *National Labor Relations Board* v. *Black-Clawson Company*, 210 F.2d 523 (6th Cir. 1954). Being mandatory, as opposed to permissive, subjects of bargaining, if a company refuses to bargain about active employees' retirement benefits when the employees' bargaining representative requests the opportunity to do so, it violates not only section 8(a)(5), but also section 8(a)(1), which prohibits employers from interfering with, restraining, or coercing employees in their section 7 right "to bargain collectively through representatives of their own choosing."[8] Furthermore, being mandatory, the matter can be pressed by either party to an impasse, or be used, under appropriate circumstances, to block an agreement or justify a strike or lockout. *See, e.g., National Labor Relations Board* v. *Wooster Division of Borg-Warner Corp.*, 356 U.S. 342 (1958).

However, the issue in this case is not whether retirement benefits for *active* employees are mandatory subjects of collective bargaining. The issue is, once retirement benefits have

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[8] Section 8(a)(1) makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." 29 U.S.C. § 158(a)(1) (1964).

Section 7 of the Act, 29 U.S.C. § 157 (1964), provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ."

been negotiated for active employees who have retired and begun collecting benefits, whether an employer may propose improvements in benefits to the retirees individually, or whether retirees are "employees" under section 8(a)(5), changes in whose benefits must be collectively bargained with the union.[9] We find that retirees are not "employees" within the meaning of section 8(a)(5) and that the Company was under no constraint to collectively bargain improvements in their benefits with the Union.

## II.

The Board found that persons who have retired from the service of an employer may be considered "employees" with respect to whom the employer must bargain collectively because, as a general proposition, coverage of the Act is not limited to persons currently in the employ of a particular employer. It is true that for many purposes the Act extends protection to persons not currently serving employers. How-

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[9] This is not the case of an employer unilaterally abrogating contractually vested retirement benefits of retirees, as it might have been had the Company unilaterally substituted contributions to supplementary Medicare plans for the negotiated health plans, as it originally planned to do. In that event, the retirees would have had an appropriate remedy, either by invoking the grievance procedure of the contract under which they received the benefits, or by bringing an action under Section 301 of the Labor-Management Relations Act, 1947, 29 U.S.C. § 185(a) (1964). *See United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). Even then, however, the Company's conduct would not rise to the level of an unfair labor practice in the absence of a showing of bad faith in arbitration or a reasonable tendency of undermining the union as the bargaining agent for active employees. *See Sinclair Refining Co.* v. *NLRB*, 306 F.2d 569 (5th Cir. 1962); *Independent Petroleum Workers of New Jersey* v. *Esso Standard Oil Co.*, 235 F.2d 401 (2d Cir. 1956); *National Labor Relations Board* v. *Pennwoven, Inc.*, 194 F.2d 521 (3d Cir. 1952).

Nor is this case to be confused with those holding it an unfair labor practice under section 8(a)(5) for an employer to short-circuit the collective bargaining process by bypassing the union and bargaining directly with *active* employees or instituting changes unilaterally during the bargaining process. *See, e.g., National Labor Relations Board* v. *Katz*, 369 U.S. 736 (1962).

Moreover, we do not decide the extent to which a company violates the Act by making deceptive offers to retirees, the effect of which may be to defraud them into accepting reduced retirement benefits.

ever, by plain meaning an employer has no statutory duty to bargain collectively with respect to persons who are not "his employees."

Section 2(3) of the Labor-Management Relations Act, 1947, 29 U.S.C. § 152(3) (1964), provides:

> "When used in this subchapter –
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> • • •
>
> "(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, *unless this subchapter explicitly states otherwise*, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment . . . [Emphasis added]."

As the Supreme Court indicated in *Phelps Dodge Corporation* v. *NLRB*, 313 U.S. 177 (1941), the purpose of this broad definition, which was borrowed almost wholly from the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115 (1964), was to insure against interpretations, such as had at one time been made under the Clayton Act, that persons not employed by a particular employer were prohibited from peaceful picketing to publicize a dispute because they did not stand in the proximate relationship of employees to the employer involved. *Id.* at 191-92. In addition, it was intended to dispel any notions that labor unions had to limit the extent of their organizations to employees of a single employer. In twice emphasizing the statutory language italicized above, the Supreme Court made plain its belief that the expansive definition of "employee" in section 2(3) was to give way where "the Act explicitly states otherwise." As a particular example, the Court stated:

> "In determining whether an employer has refused to bargain collectively with the representatives of 'his em-

> ployees' in violation of § 8(5) [now section 8(a)(5)] and § 9(a) it is of course essential to determine who constitute 'his employees.' One aspect of this is covered by § 9(b) which provides for the determination of the appropriaee bargaining unit." *Phelps Dodge Corp.* v. *NLRB, supra,* at 912.

There was nothing strained or unnatural in this interpretation. The statute itself plainly provides that it shall be an unfair labor practice for an employer

> "to refuse to bargain collectively with the representatives of *his employees,* subject to the provisions of section 9 (a)."

This construction is, of course, unaffected by those cases on which the Board relies heavily, making it an unfair labor practice under Section 8(a)(3) of the Act for an employer to discriminate in the hiring of applicants for employment, who were not in the company's employ,[10] registrants at hiring halls,[11] employees of a company taken over by a "successor employer,"[12] employees who have quit,[13] and other persons not currently employed and outside the bargaining unit. Section 8(a)(3) forbids "discrimination in regard to hire or tenure." If prospective employees or those whose employment has ceased because of illegal discrimination were not regarded as within its terms, a refusal to hire for unlawful reasons, and unlawful discharge, could never be unfair labor practices under this section.

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[10] *Phelps Dodge Corp.* v. *NLRB,* 313 U.S. 177 (1941). *Accord, NLRB* v. *Louisville Chair Co.,* 385 F.2d 922, 925 (6th Cir. 1967), *cert. denied,* 390 U.S. 1013.

[11] *Local 872, International Longshoremen's Association,* 163 NLRB 586 (1967); *Local 1351, Steamship Clerks etc.* v. *NLRB,* 329 F.2d 259 (D.C. Cir. 1964), *cert. denied,* 377 U.S. 993.

[12] *Chemrock Corp.,* 151 NLRB 1074 (1965). *Chemrock* deals with facts and issues entirely different from those present here, however to the extent of any apparent inconsistency, we decline to follow it.

[13] *Goodman Lumber Co.,* 166 NLRB No. 48 (1967).

The Board itself has recognized this distinction between the use of the word in section 8(a)(3) and (5):

> "We do not regard as controlling for purposes of determining for whom an employer must bargain those cases cited . . . which hold that the antidiscrimination provisions of Section 8(a)(3), (4) and (b)(2) of the Act forbid discrimination against applicants for employment. The antidiscrimination provisions refer to 'employees' *generally*, whereas unlike these provisions, Section 8(a)(5) contains specific language requiring an employer to bargain for *'his' employees*. [Emphasis in original]" *Page Aircraft Maintenance, Inc.*, 123 NLRB 159, 163 (1959).

We are similarly unpersuaded by the analogy made by the Board between the word "employee" as that word has been construed for the purposes of Section 302 of the Labor-Management Relations Act, 29 U.S.C. § 186 (1964), *see, e.g., Blassie* v. *Kroger*, 345 F.2d 58, 68-71 (8th Cir. 1965), and the word "employee" as it appears in section 8(a)(5). Section 302 is a criminal provision, making it a misdemeanor for an employer to make payments to a union representing his employees. Section 302(c), under which *Blassie, supra*, was decided, exempts from the operation of the section employer contributions to, *inter alia*, employee trust funds, among which are pension and retirement plans. Not to regard retirees as employees for the purposes of that section would frustrate the purpose of retirement trusts, which have been designated as mandatory subjects of bargaining, by making distributions to retirees from them illegal. The Board's argument that it is an "anomaly" to treat the word differently under the two sections is itself an anomaly.

We also reject the Board's argument that the interpretation of the word "employee" by the Internal Revenue Service under Sections 401(a) and 501(c)(9) of the Internal Revenue Code of 1954, 26 U.S.C. §§ 401(a) & 501(c)(9) (1964), is dispositive of the issues in this case. *See* 26 CFR §-1.401, *as revised*, Jan. 1, 1969.

We find that the general definition of "employees" in section 2(3) is superseded by the explicit statement in section 8(a)(5), and that an employer has a duty to bargain collectively only with the representatives of *his employees.*

We now turn to the issue whether retired employees are employees of the Company for the purposes of section 8(a)(5).[14] Upon this issue the record is clear. Retirement with this Company, as with most other companies, is a complete and final severance of employment. Upon retirement, employees are completely removed from the payroll and seniority lists, and thereafter they perform no services for the employer, are paid no wages, are under no restrictions as to other employment or activities, and have no rights or expectations of re-employment. For these reasons, as will be discussed below, the Board has consistently held that retired employees have no right to vote in representation elections, even when the employer has a right, and they have some expectation, of being recalled to work. *W. D. Byron & Sons,* 55 NLRB 172, 174-75 (1944).

The fact that retired persons may continue to receive pensions after permanently leaving the service of an employer does not entitle them to continued status as employees. Indeed, the receipt by them of retirement benefits further emphasizes the finality of their employment severance.

We find that persons who have retired from the service of an employer are no longer "his employees."

## III.

In addition to limiting the employer's bargaining obligation to "his employees," section 8(a)(5) conditions the bargain-

[14] Although the Board's interpretation of the term "employee" is entitled to some weight, *Local No. 207, International Association of Bridge Workers* v. *Perko,* 373 U.S. 701, 706 (1963); *National Labor Relations Board* v. *Hearst Publications, Inc.,* 322 U.S. 111, 130 (1944), the Board made no finding in this case that retirees are employees within the meaning of the Act. In prior cases, however, the Board has expressly found that retirees are not employees for the purposes of the more expansive section 2(3). *See, e.g., Public Service Corporation of New Jersey,* 72 NLRB 224, 229-30 (1947).

ing obligation on the provisions of section 9(a), which provides:

> "Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for purposes of collective bargaining . . . ."

It has repeatedly been held that the scope of the bargaining unit controls the extent of the bargaining obligation, and that a union has no right to demand, over an employer's objection, a change in the unit. *See, e.g., Eastern Greyhound Lines* v. *NLRB,* 337 F.2d 84 (6th Cir. 1964); *Douds* v. *International Longshoremen's Association,* 241 F.2d 278 (2d Cir. 1957). This second condition, therefore, demands a resolution of the issue whether retirees are in the bargaining unit.

As was indicated above, the unit certified by the Board as appropriate was composed of "employees of the Employer's plant . . . working on hourly rates, including group leaders who work on hourly rates of pay . . . ." Retirees were not mentioned. Thus, the Board certified a bargaining unit composed only of presumably active employees "of the Employer's plant" and "working on hourly rates of pay."

In no prior case where the issue was raised did the Board hold that a retiree was in such a unit, or entitled to vote in an election. *See Taunton Supply Corporation,* 137 NLRB 221, 223 (1962); *Public Service Corporation of New Jersey,* 72 NLRB 224, 229-30 (1947); *J. S. Young Company,* 55 NLRB 1174 (1944); *W. D. Byron & Sons,* 55 NLRB 172, 174-75 (1944).

In *Public Service Corporation of New Jersey, supra,* 72 NLRB at 229-30, for example, the Board stated:

> "We have considerable doubt as to whether or not pensioners are employees within the meaning of Section 2(3) of the Act, since they no longer perform any

> work for the Employers, and have little expectancy of resuming their former employment. In any event, even if pensioners were to be considered employees, we believe that they lack a substantial community of interest with the employees who are presently in the active service of the Employers."

In *W. D. Byron & Sons, supra,* 55 NLRB *at* 174-75, the Company had a policy of laying off and pensioning employees who, due to advanced age, could not perform their work well, but the Company retained the right to recall them for light work when it became available. When the pensioners sought to be included in the bargaining unit, the Board stated:

> "None of the seven men laid off and pensioned in July 1943 has since been recalled to work, as no light work has been available at the tannery in this 6-month period. The Company does not know when suitable work will be available. Since it appears that the pensioners have little expectation of active employment at the tannery, we shall exclude them from the bargaining unit of regular production and maintenance workers."

*See also, Denver-Colorado Spring-Pueblo Motor Way* 129 NLRB 1184, 1185 (1961), where the Board held that employees are included in proposed units "only if they spend a 'major portion of their time' in tasks alike or similar to the ones of the other employees in the unit." The Board defined "major portion of their time" as 50 percent or more.

Yet, the Board holds in this case that retirees should be included in the bargaining unit for the purpose of renegotiating their retirement benefits because this subject "vitally affects" active bargaining unit employees. The Board indicates that active bargaining unit employees are affected in essentially three ways.

First, the Board states that "the Union and current employees have a legitimate interest in assuring that negotiated

retirement benefits are in fact paid and administered in accordance with the terms and intent of their contracts." We agree. Congress has provided a remedy, however, for breaches of contracts regarding retirement benefits, and, as we have pointed out below, n. 9, *supra* at p. 12, every breach of a collective bargaining contract is not, per se, an unfair labor practice. In any event, the issue in this case is not whether contract benefits can be legally enforced, but whether contract benefits for retirees must be re-opened at the request of the Union after the employees to whom these benefits are payable have retired.

Second, the Board indicates, and we agree, that active employees have a "selfish" interest about bargaining about retirement benefits, since these benefits are "an integral part of their total compensation." Leaving aside their altruistic sentiments, what active employees are concerned about are *their own* retirement benefits. It is not necessary to extend the bargaining obligation to persons already retired in order to insure current employees the right to negotiate through their bargaining representative their own retirement benefits to take effect after their retirement.

Third, the Board states that changes in retirement benefits for retired persons should be made mandatory subjects of collective bargaining because such changes "affect the availability of employer funds available for active employees." This, again, is of course true. However, does this mean that all employer salaries, including those to supervisory and managerial personnel, are mandatory subjects which must be collectively bargained with the Union? Moreover, all employer expenditures, from dividends to capital expenditures, affect, however obliquely, the availability of employer funds for active unit employees. Surely the Board does not contend that these are mandatory subjects of bargaining.

Congress decreed that the bargaining agent's authority extends only to bargaining for "all of the employees in a unit appropriate for such purposes." The appropriate bargaining

unit has economic incidents which the Board simply cannot modify by fiat or enlarge by sympathy.

We find that retired employees are not within the bargaining unit, and that under the plain meaning of the Act, employers have no statutory duty to re-negotiate with their unions improvements in retired employees' pension benefits.

## IV.

Not only are the Board's arguments without support in the language of the Act, they are in defiance of its purpose. The purpose of federal labor legislation is to reconcile and, insofar as possible, equalize the power of competing economic forces within the society in order to encourage the making of voluntary agreements governing labor-management relations and prevent industrial strife. *See* Section 1, National Labor Relations Act, 29 U.S.C. § 151 (1964); Section 1, Labor-Management Relations Act, 1947, 29 U.S.C. § 141 (1964); *Consolidated Edison Company* v. *NLRB*, 305 U.S. 197, 221-22, 236 (1938); *National Labor Relations Board* v. *American National Insurance Company*, 343 U.S. 395, 401-403 (1952). Its purpose is not artificially to create or manufacture new economic forces. Thus, the Act "leaves the adjustment of industrial relations to the free play of economic forces but seeks to assure that the play of those forces be truly free." *Phelps Dodge Corporation* v. *NLRB*, 313 U.S. 177, 183 (1941).

Retired employees have no economic or bargaining power within this system. Their financial security derives from past economic power pragmatically and prudently exercised. Once retirement benefits have been bargained for, earned, and become payable, the employer may not recant on his contractual obligation to pay them. Section 301, Labor-Management Relations Act, 1947, 29 U.S.C. § 185(a) (1964). Nor may retirees demand that they be increased. Changing economic facts pertaining to the employer's business or the general economy occurring after an employee retires cannot enhance or depreciate the value of his prior services or justify

periodic post-retirement negotiations. The employer cannot retroactively increase his prices to compensate for these increased benefits, or fund expenses which are, as these would be, open-ended.

Moreover, retirees given the bargaining power would lose their economic security, for just as surely as an employer may increase benefits, in bargaining, he may take them away. Even if retirees were given the statutory power to periodically renegotiate pension benefits previously earned, the union would be an inappropriate bargaining vehicle. It is not at all unlikely that a union negotiator, presented with the opportunity to advance employees' wages at the expense of retirees' pensions, would choose to favor his constituents at the expense of the honorary union members, who retain no voting power.

We have studied with care the evidence in the *amicus curiae* briefs tending to show that the practice in industry is to bargain on retired employees' benefits. This voluntary practice demonstrates the increasingly humanitarian quality of the labor-management relationship, and is to be encouraged. However, it does not form a basis on which this Court can alter the statutory language, or undermine the Congressional intent.

V.

The Company's petition to review is granted, and the Labor Board's cross-application to enforce is denied.

## ORDER OF THE COURT OF APPEALS.

(Filed June 10, 1970.)

No. 19,875.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

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PITTSBURGH PLATE GLASS COMPANY,
CHEMICAL DIVISION,

*Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

and

LOCAL UNION NO. 1, ALLIED CHEMICAL AND
ALKALI WORKERS OF AMERICA,

*Intervenor.*

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BEFORE: WEICK, CELEBREZZE and BROOKS, Circuit Judges.

On petition for review and cross-petition for enforcement of an order of the National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged and decreed by this Court that the petition to review is granted and the cross-petition to enforce is denied.

It is further ordered that Petitioner recover from Respondent the costs on appeal, as itemized below.

Entered by order of the Court.

CARL W. REUSS,
*Clerk.*

[Filed July 31, 1970 Carl W. Reuss, clerk]

No. 19,875

United States Court of Appeals
for the Sixth Circuit

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION, PETITIONER

*vs.*

NATIONAL LABOR RELATIONS BOARD, RESPONDENT, AND LOCAL UNION NO. 1, ALLIED CHEMICAL AND ALKALI WORKERS OF AMERICA, INTERVENOR

*Order*

Before: WELCK, CELEBREZZE and BROOKS, Circuit Judges

Respondent's petition for rehearing having come on to be considered, and of the judges of this Court who are in regular active service only Judges Edwards and McCree having favored ordering consideration en banc,

IT IS ORDERED that the petition be, and it is hereby denied.

Entered by order of the court.

CARL W. REUSS,
*Clerk.*

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Supreme Court of the United States

No. ——, October Term, 1970

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*vs.*

PITTSBURGH PLATE GLASS CO., CHEMICAL DIVISION, ET AL.

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*Order Extending Time To File Petition for Writ of Certiorari*

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UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 16, 1970.

POTTER STEWART,
*Associate Justice of the Supreme Court of the United States.*

Dated this 16th day of October, 1970.

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Supreme Court of the United States

No. 910 ——, October Term, 1970

ALLIED CHEMICAL & ALKALI WORKERS OF AMERICA, LOCAL UNION NO. 1, PETITIONER

*v.*

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION, ET AL.

*Order Allowing Certiorari, Filed February 22, 1971*

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is consolidated with No. 961 and a total of one hour is allotted for oral argument.

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Supreme Court of the United States

No. 961 ——, October Term, 1970

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION, ET AL.

*Order Allowing Certiorari, Filed February 22, 1971*

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is consolidated with No. 910 and a total of one hour is allotted for oral argument.

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